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A HANDBOOK

ON

COMPULSORY ACQUISITION OF LAND

AND

COMPENSATION.

A HANDBOOK

ON

COMPULSORY ACQUISITION OF LAND

AND

COMPENSATION.

BY

ROBERT ABERCROMBY GORDON, M.A., LLM., K.C.,

OF THE INNER TEMPLE AND THE SOUTH-EASTERN CIRCUIT.

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PREFACE.

An endeavour has been made to compress the law and practice relating to Compulsory Acquisition of Land and Compensation into a small compass in order to produce a handy volume. This work, therefore, will be found to deal with such aspects of the subject as ordinarily present themselves in the course of a compensation case to the legal practitioner or Clerk to a Local or Public authority.

The work is not overburdened with many reported cases because so many comprehensive digests exist to-day, such as Mews' Digest, the Empire Digest, and numerous references to cases found in Halsbury's Laws of England under the heading "Compulsory Purchase." There are a number of recent statutes authorising local authorities to purchase land compulsorily for public purposes. Such statutes include the Town Planning Act, 1925, the Housing Act, 1925, the Public Health Act, 1925, the Roads Improvement Act, 1925, and the Small Holdings and Allotments Act, 1926, and the procedure in compensation cases under these statutes is governed by the Acquisition of Land (Assessment of Compensation) Act, 1919. Cases arising out of the construction of these statutes are not numerous, but such as there are will be found referred to in this volume. An investigation into the cases, however,

has revealed to me a good deal of the history of railway construction in the early part of the last century and I have been impressed by the extraordinary length of the judgments delivered. However, the judgment of Pollock, C. B., in *Eastham* v. *Blackburn Railway Company* (1854), 23 L. J. Ex. 199, proved an exception and was as follows: "This is a very plain case. For the credit of Westminster Hall we ought to refuse this rule." I am much indebted to my friend, Mr. R. H. Bayford, Barrister-at-Law, of the Inner Temple, for the assistance he has given me in connection with the preparation of the Index and the lists of Cases and Statutes. He also drafted the Forms and Precedents which will be found in the Appendix.

I am further indebted to the following, namely, to the Editor of the "Estates Gazette" (Digest of Law and Arbitration Cases) for permitting me to make use of cases from recent volumes of those reports for the purposes of Chapter XIII. and Chapter XXII.; to the Publishers of the Annual Practice for permitting me to reprint notes on the Lands Clauses Act and Costs from that work; and to the Incorporated Council of Law Reporting for having given me permission to make use of headnotes and judgments contained in the Law Reports. I also thank the Secretariat of the Land Values Reference Committee for having given me information relating to certain points of practice.

ROBERT A. GORDON.

1, Temple Gardens,
Temple.
July, 1929.

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ERRATA.

For "ACQUISITION OF LAND (COMPULSORY PURCHASE) ACT, 1919," *read* "ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919," ON—

Page 1, in the heading.
„ 2, in the text and note at side.
„ 96, in heading and text.
„ 108, at beginning of chapter.

COMPULSORY ACQUISITION OF LAND AND COMPENSATION.

CHAPTER I.

INTRODUCTION.

Reasons for passing Lands Clauses Act, 1845—Acquisition of Land (Compulsory Purchase) Act, 1919—Lands Clauses Act Amendment Act, 1860—Lands Clauses Consolidation Act, 1869—Lands Clauses (Taxation of Costs) Act, 1895—Lands Clauses (Umpire) Act, 1883—Principal sections of Lands Clauses Act, 1845—Reference in Small Holdings and Allotments Act, 1926, to Acquisition of Land Act, 1919—Public Health Act, 1925, s. 31—Law of Property Act, 1925, s. 84—Town Planning Act, 1925, s. 10 (4)—Compensation by reason of passing a town planning scheme—Crown must pay compensation if land taken compulsorily—*Attorney-General* v. *De Keyser's Royal Hotel.*

Reasons for passing of Lands Clause Consolidation Act, 1845.

The first part of the last century was a period of great activity in the railway world. Railways were being constructed in every part of the British Isles. Parliament was asked every session to confer compulsory powers for purchasing land upon railway companies, and the Bills promoted with that object contained innumerable clauses dealing with matters of pure detail. Many hours were spent in Committee discussing these clauses, and Parliament therefore decided to pass into law a general Act which should apply to every undertaking authorised by any Act of Parliament which should thereafter be passed, authorising the purchase or taking of lands for such undertaking.

The Lands Clauses Act, 1845.

This Act was the Lands Clauses Consolidation Act, 1845 (hereafter referred to as the "Lands Clauses Act,

1845 "), and from that date, that Act is deemed to be incorporated in any Act granting compulsory powers of purchase of lands, and all the clauses and provisions of that Act, except so far as any have been expressly varied or excepted by any such Act, apply to the undertaking authorising such compulsory purchase, so far as the same may be applicable to such undertaking, and form part of such Act, and are construed together with, as forming one Act.

In the same year the Railways Clauses Consolidation Act, 1845, was passed, and the sections of that Act are deemed to apply to every railway constructed after the passing of that Act, unless specially varied or excepted.

The days of extensive railway construction have passed, but considerable powers exist authorising Government departments and public and local authorities to acquire land compulsorily for public purposes. The Lands Clauses Act, 1845, apply to those cases in so far as there are no special provisions in the Acts which authorise the public and local authorities to purchase such land compulsorily, and another Act is now particularly applicable to cases where Government departments or local or public authorities possess such powers, namely, the Acquisition of Land (Compulsory Purchase) Act, 1919 (hereafter referred to as the Acquisition of Land Act, 1919).

The Acquisition of Land (Compulsory Purchase) Act, 1919.

Several sections of the Lands Clauses Act, 1845, have been amended or repealed by subsequent legislation, and it is submitted that the time has arrived when a new code should take its place, as, owing to the modern practice of excepting sections from incorporation in Acts which authorise compulsory purchase, it is very difficult to see why some sections should remain in force at all. For example, sect. 92 of the Lands Clauses Act, 1845, enacts that "no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such

party be willing and able to sell and convey the whole thereof." This section is excepted from incorporation in the Public Health Act, 1925, by sect. 33 (8) of that Act. It is also excepted from incorporation in the Housing Act, 1925, by the second Schedule of that Act, and modern railway Acts contain sections having the effect of excepting sect. 92 from incorporation.

Public Health Act, 1925, s. 33 (8).

Housing Act, 1925, 2nd Schedule.

Again, sects. 84 to 90 inclusive of the Lands Clauses Act, 1845, are excepted from incorporation in the Housing Act, 1925, by sect. 106 of that Act. These sections deal with entry upon lands by the promoters of the undertaking before the land has been purchased.

Lands Clauses Act, 1845, ss. 84—90.

Further, an Act may incorporate only certain parts of the Lands Clauses Act, 1845. For example, sect. 34 (2) of the University and College Estates Act, 1925, incorporates the Lands Clauses Act, 1845, as if the university or college in each particular case had been inserted therein instead of "the promoters of the undertaking," but there is excepted from such incorporation such parts of the Lands Clauses Act, 1845, as relate to the purchase of lands otherwise than by agreement, and to the recovery of forfeitures, penalties and costs, and to the sale of superfluous lands.

University and College Estates Act, 1925, s. 34 (2).

The Lands Clauses Consolidation Act Amendment Act, 1860, amends sects. 10 and 11 of the 1845 Act as to rentcharges, and gives the Secretary for War the same powers as are given to promoters of undertakings under the principal Act.

Lands Clauses Consolidation Act Amendment Act, 1860.

The Lands Clauses Consolidation Act, 1869, is now repealed by the Statute Law Revision Act (No. 2) Act, 1893, and the Lands Clauses (Taxation of Costs) Act, 1895, with the exception of the section which provides that where any lands authorised to be taken by a special Act are situate in the City of Westminster, in every case in which any question of disputed compensation is required

Lands Clauses Consolidation Amendment Act, 1869.

to be ascertained by a jury, it shall be one summoned by the high bailiff of the City of Westminster or his deputy.

Lands Clauses (Umpire) Act, 1883.

The Lands Clauses (Umpire) Act, 1883, amends sect. 28 of the Lands Clauses Act, 1845, and provides that the Board of Trade may appoint an umpire in all cases where either party makes a request to the Board, if the arbitrators to an arbitration under the Act refuse or neglect to appoint an umpire for seven days after the request of either party.

Lands Clauses (Taxation of Costs) Act, 1895.

The Lands Clauses (Taxation of Costs) Act, 1895, provides that the costs of any enquiry under the 1845 Act shall, at the request of either party, be taxed by a Master of the Supreme Court.

It is not intended in this small work to deal with the Lands Clauses Act in detail, but the principal matters dealt with by the Act are to be found in the margin of the Act, and are as follows:—

Principal sections of the Lands Clauses Act, 1845.

Sects. 6 to 15.—Purchase of lands by agreement.

Sects. 16 to 68.—Purchase of lands otherwise than by agreement.

Sects. 69 to 80.—Application of compensation.

Sects. 81 to 83.—Conveyances.

Sects. 84 to 91.—Entry on lands.

Sect. 92.—Promoters to take whole premises if owner desires.

Sects. 93 and 94.—Intersected lands.

Sects. 95 to 98.—Copyholds. (No fresh cases can arise on these sections, as copyhold tenure has been abolished by the Law of Property Act, 1922.)

Sects. 99 to 107.—Common land.

Sects. 108 to 114.—Lands in mortgage.

Sects. 115 to 118.—Rent-charges. (Note amending Act, 1860.)

Sects. 119 to 123.—Leases.

Sects. 124 to 126.—Interest omitted to be purchased.

Sects. 127 to 135.—Sale of superfluous lands.

Sects. 136 to 148.—Penalties. (These sections have been very largely repealed.)

When the Acquisition of Land Act, 1919, applies.

The Acquisition of Land Act, 1919, previously referred to, applies where, by or under any statute (whether passed before or after the passing of the Act), land is authorised to be acquired compulsorily by any Government department, or by a local or public authority.

Sect. 7 (1) of that Act made certain exceptions, but has been partly repealed by the Housing Act, 1925, the method of obtaining compensation for compulsory purchase under that Act being now governed by the provisions of the Acquisition of Land Act, 1919. (Sched. I. of the Housing Act, 1925.)

Reference to the Acquisition of Land Act, 1919, in the Small Holdings and Allotments Act, 1926.

The Acquisition of Land Act, 1919, has been referred to in the Small Holdings and Allotments Act, 1926. Sect. 7 (2) of the Acquisition of Land Act, 1919, states that the provisions of the Act apply to the determination of the amount of rent or compensation payable in respect of land authorised to be hired compulsorily under the Small Holdings and Allotments Act, 1908, or any Act amending that Act. Sect. 39 of the Small Holdings and Allotments Act, 1908, provides the machinery under which land is to be compulsorily acquired under the Act, and also permits the acquiring authority to withdraw a notice to treat given in respect of land it intended to purchase or hire under certain conditions as to compensation.

Sect. 17 (3) of the Small Holdings and Allotments Act, 1926, declares that in order to remove doubts as to the effect of the Acquisition of Land (Assessment of Compensation) Act, 1919:—

(a) That the said Act does not apply to the determination of a dispute as to the amount of compensation payable on the withdrawal of a notice to treat under sect. 39 (8) of the Small Holdings and Allotments Act, 1908; and

(b) That the Acquisition of Land Act, 1919, does not

affect the power of the Minister of Agriculture and Fisheries, under paras. (5) and (6) of Part I. of the First Schedule to the 1908 Act, to give directions with respect to the hearing of counsel or expert witnesses, and of fixing scales of costs, and that any directions so given and scales so fixed apply to arbitration before an official arbitrator, both when assessing the compensation in the case of the compulsory purchase of land, and when assessing the rent and other compensation to be paid in the case of the compulsory hiring of land.

When the Acquisition of Land Act, 1919, is considered, it will be seen that the official arbitrator in the cases before him has very wide powers, and the provisions of the Small Holdings and Allotments Act, 1926, make it clear that his powers extend to arbitrations held in relation to matters arising out of the said Act and the principal Act of 1908.

Many matters are now being referred to an official arbitrator which would not come within the jurisdiction of an official arbitrator under the Acquisition of Land Act unless other Acts provided for his intervention. For example, under sect. 31 of the Public Health Act, 1925, compensation payable by a local authority for damage or loss occasioned to any person by a condition on the part of the local authority that a new street shall be in excess of the bye-law width, is to be decided by an official arbitrator under the Acquisition of Land Act, 1919.

Again, under sect. 84 of the Law of Property Act, 1925, an official arbitrator is the authority having power to discharge or modify restrictive covenants affecting land, and under sect. 5 (5) of the Roads Improvement Act, 1925, the official arbitrator is appointed to determine the compensation payable where a person can prove that his property has been injuriously affected by the prescription of a building line under that section.

Further, under sect. 10 (4) of the Town Planning Act, 1925, it is provided that the compensation payable to any person whose property is injuriously affected by

the making of a town planning scheme shall be assessed by an official arbitrator unless the parties agree upon some other method of determination.

Compensation.

When authority is given by Parliament for land to be taken compulsorily, compensation always follows. The amount of compensation to be given to an owner whose lands are so taken compulsorily, depends upon certain principles which differ according to the circumstances under which the land is taken. For example, the amount will depend upon whether the land is acquired by a statutory company, such as a railway company, or by a Government department or a local or public authority. The basis of compensation to be obtained against a statutory company will prove generally to be wider than when the land is acquired by a Government department or a local or public authority. This matter largely depends upon whether the case comes within the provisions of the Acquisition of Land Act, 1919, or under the Lands Clauses Act, 1845, or a statute other than the Acquisition of Land Act, 1919. An example of the importance to an owner of a decision as to whether the Acquisition of Land Act, 1919, was or was not applicable to his case was *Thurrock, Grays and Tilbury Joint Sewerage Board* v. *Thames Land Company, Ltd.* (1925), 23 L. G. R. 648. A land company was the owner in fee of certain land through which a sewerage board, under the Public Health Act, 1875, after serving notice of intention to do so, carried a sewer and a rising main. In order to assess the compensation payable, an arbitrator was appointed under the Public Health Act, 1875. He made his award in the form of a special case. If the Court were of opinion that compensation should be assessed solely under the Public Health Act, 1875, he awarded the company £5,090, whereas if the arbitration were under the Acquisition of Land Act, 1919, and the basis on which compensation was to be awarded were to be governed by the rules in sect. 2 of that Act, he awarded £2,148.

Roche, J., decided that the Acquisition of Land Act, 1919, applied, and the lower amount awarded by the arbitrator stood.

The case of *Blackpool Corporation* v. *Starr Estate Company*, (1922) 1 A. C. 27, was cited during the hearing of the case above referred to. The Blackpool Improvement Act, 1917, s. 70, enacted that the owners of certain lands mentioned in the section were to sell the land to the corporation, the amount of compensation to be settled by arbitration under the Lands Clauses Acts as modified by that Act. It was held that the 1919 Act did not apply and that compensation was to be ascertained in the manner provided by the Lands Clauses Acts as modified by the private Act of 1917, on the grounds that sect. 70 of the private Act embodied an agreement between the parties for the sale and purchase of the land and that the land was not "authorised to be acquired compulsorily."

The right to compensation where land is taken compulsorily extends even to a right against the Crown. (*Attorney-General* v. *De Keyser's Royal Hotel, Ltd.*, (1920) A. C. 508.) In that case the Crown during the war, purporting to act under the Defence of the Realm Regulations, took possession of an hotel for the purpose of housing the headquarters' personnel of the Royal Flying Corps and denied the legal right of the owners to compensation. It was held that the Crown is not entitled as of right, either by virtue of its prerogative or under any statute, to take possession of the land or buildings of a subject for administrative purposes in connection with the defence of the realm without paying compensation for their use and occupation. Lord Atkinson said, at page 539, referring to the lands having been taken by the Crown or its officers for the defence of the realm, "the conclusion, as I understand it, is this: that it does not appear that the Crown has ever taken for those purposes the land of the subject without paying for it, and

there is no trace of the Crown having ever in the time of the Stuarts exercised or asserted the power or right to do so by virtue of the Royal Prerogative." He also added that he concurred with the conclusion at which Lord Lindley arrived in *Wheaton* v. *Maple*, (1893) 3 Ch. 48, 64, as to the purpose, object and effect of the body of legislation passed from 1708—1798 enabling land, or the use of it, to be compulsorily acquired by the Crown on the terms of the owner being paid for it.

This work will be found to deal with the procedure under which land is required compulsorily and also with the principles applying to the compensation following the compulsory acquisition.

CHAPTER II.

AUTHORITY TO PURCHASE COMPULSORILY.

Authority of Parliament necessary—Powers applied for by statutory company—Private Bill procedure—Capital to be subscribed before exercise of powers—Promoters must comply strictly with authority given to them by Parliament—Authority given to Government department or local or public authority by general Act or special local Act generally followed by Order confirmed by Parliament or Minister—Definition of "public authority" in Acquisition of Land Act, 1919—*Metropolitan Water Board* v. *Berton*—Authority to purchase under Public Health Act, 1925—Town Planning Act, 1925—Form of compulsory order under Housing Act, 1925—Order, when confirmed by Minister, not subject to review by Court, but prohibition lies to prevent confirmation by Minister—*Rex* v. *Minister of Health, Ex parte Davis*.

Parliamentary authority must be shown.

In all cases where it is desired to acquire land compulsorily the authority of some Act of Parliament must be shown, and owing to the passing of the Acquisition of Land Act, 1919, it becomes necessary to divide the cases where land is compulsorily acquired, into two classes.

I. Where land is acquired by a statutory company or body of persons carrying on business for profit or gain, such as a railway, gas, or water company.

II. Where land is acquired compulsorily by a Government department or a local or public authority.

I.—*Where Land is compulsorily acquired by a Statutory Company.*

Compulsory purchase by a statutory company.

If a body of persons combine together in order to carry on some undertaking for profit, and find it necessary to acquire land compulsorily, they must apply to Parliament

by way of a private Bill, asking Parliament to authorise the carrying out of the work, and also to authorise them to compulsorily acquire land for the purpose of that undertaking. Such a body of persons is called "the promoters," the word "promoters" being defined in the Lands Clauses Act, 1845, as "the parties, whether company, undertakers, commissioners, committees, corporations, or private persons by the special Act empowered to execute the works authorised by the special Act." Railway companies, gas companies, and water companies are amongst the bodies which generally apply for such powers. The undertaking, when authorised, becomes a statutory undertaking, and the promoters a statutory company.

Application to Parliament for powers.

The formalities applying to the promotion of a private Bill will be found in the Standing Orders of the House of Commons, published yearly by His Majesty's Stationery Office, and the services of an experienced parliamentary agent will be necessary for the drafting of a Bill, and arranging for its progress through the Houses of Parliament and committees.

Private Bill procedure.

Under Standing Order II. of the House of Commons relating to private Bills on or before 15th December immediately preceding the application for a Bill for power to take any lands or houses compulsorily, or for compulsory user of the same, or for an extension of the time granted by any former Act for that purpose, notice in writing must be given to the owners or reputed owners, lessees or reputed lessees, and the notice is to be as nearly as possible in the following terms:—

"Sir.—We beg to inform you that application is intended to be made to Parliament in the ensuing session for an Act entitled the Act, and that the property mentioned in the annexed Schedule, Part I., or some part thereof in which we understand you are interested as therein stated, will be liable to be taken compulsorily for the purposes of the undertaking. We also beg to inform

you that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the (Clerks of the Peace of the counties in which the property is situated), on or before the 30th November, and that copies of so much of the said plan and section as relates to the (parish or area where property is situated) in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the (Clerk of the Peace for), on or before the 30th November, on which plan your property is designated by the numbers in the annexed Schedule.

"We also beg to inform you that it is intended that the Act shall provide to the effect that, notwithstanding sect. 92 of the Lands Clauses Act, 1845, you may be required to sell and convey a part only of your property numbered on the deposited plans.—Signed ."

The Schedule referred to in the above letter shows the property which may be acquired compulsorily and the following details, namely, the parish in which it is situate, its number on plan, description and the names of owner, lessee, or occupier.

On or before the 30th November, plans and books of reference, compiled by qualified referencers who have made enquiry on the site as to the owners, lessees and occupiers of the land are printed and deposited in accordance with the above Standing Order.

As to the effect of deposited plans, in *Attorney-General* v. *Great Eastern Railway* (1872), L. R. 7 Ch. 475, 482 (referred to in *Taff Vale Railway* v. *Cardiff Railway*, (1917) 1 Ch. 314), Mellish, L. J., said: "It has been settled law since *North British Railway Co.* v. *Tod*, 12 Cl. & F. 722, that a company is not bound by the mere fact of a representation having been made on a plan deposited by them, unless the representation is incorporated in the Act."

Lands Clauses Act, 1845, s. 16.

Subscription of capital.

The Lands Clauses Act, 1845, applies to private Bills authorising compulsory acquisition of land by reason of the terms of sect. 1 of that Act, a part of which is as follows:—"This Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act." It may be specially noted that by sect. 16 of that Act, when the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking must be subscribed under a contract binding the parties thereto, and their executors and administrators, for the payment of the several sums by them respectively subscribed, before it is lawful to put in force any of the provisions of the Lands Clauses Act, 1845, or the special Act, or any Act incorporated therewith in relation to the compulsory taking of land for the purpose of the undertaking, and a certificate under the hands of two justices certifying that the whole of the prescribed sum has been subscribed is sufficient evidence thereof. If, however, the promoters enter upon and use the said land under sect. 85 of the Lands Clauses Act, 1845, and give a bond and make payment into Court of the purchase-money and compensation in accordance with the provisions of that section, sect. 16 of the Act does not apply. (*Great Western Railway Co.* v. *Swindon and Cheltenham Extension Railway Co.*, L. R. 9 A. C. 787.)

Certificate by two justices that capital has been subscribed.

Unnecessary that capital should have been subscribed if promoters enter under Lands Clauses Act, 1845, s. 85.

If a railway company obtains power to construct a railway and to take land compulsorily there is no obligation upon the railway company to exercise its powers, as the powers are permissible only (*Scottish North Eastern Railway Co.* v. *Stewart* (1859), 33 L. T. O. S. 307); but if the railway company commences to exercise its powers, there must be strict compliance with the powers contained in the operative Act. (*Herron* v.

Promoters must comply strictly with provisions of special Act.

Rathmines and Rathgar Improvement Commissioners, (1892) A. C. 498.) Lord Macnaghten said, at page 523: "Where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the enactment, so far as it makes provision on his behalf. It is idle for promoters to say that they have given him all that he wants, or something just as good as that which the Act required them to give, or even something better, if he only knew his own interest. It is enough for him to show that the thing which is offered is not the thing which the Act said he was to have. It is too late to call for a fresh deal at that stage of the game."

Ambiguous words in private Act.

In *Lamb* v. *North London Railway* (1869), L. R. 4 Ch. App. 522, it was said that if there are any ambiguous words in an Act of Parliament authorising a public company to take land compulsorily, those words will be construed in favour of the owner and against the company.

II.—*Where Land is Compulsorily Acquired by a Government Department or a Local or Public Authority.*

Where land is compulsorily acquired by a Government department, or a local or public authority.

As to this class of case, the Act of Parliament may be a public or general statute or an Act known as a special local Act, this being of local application only.

Examples of the former statutes are the Public Health Act, the Housing Act, the Town Planning Act, the Small Holdings and Allotments Acts, and many others, which contain provisions authorising public authorities to acquire land compulsorily either directly or by means of a provisional order confirmed by Parliament or a Minister of one of the Ministries.

Provisional order.

Definition of "public authority"

The words "public authority" are defined in sect. 12 (2) of the Acquisition of Land Act, 1919, already referred

to, as "any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking." in Acquisition of Land Act, 1919.

These words in the above section were the subject of judicial interpretation in the *Metropolitan Water Board* v. *Berton*, (1921) 1 Ch. 299, in which case it was held that the Metropolitan Water Board, a body constituted by the Metropolis Water Act, 1902, to carry on a water undertaking for the public benefit is a body of persons who, although trading, do not trade for profit, and is therefore a "public authority" within the section referred to.

Petersen, J., said: "It appears to me on the plain sense of this section that what the Legislature meant to do was to draw a distinction between a body of persons, such as an ordinary railway company which trades for profit, and a body of persons who are unlike a railway company, inasmuch as they do not trade for the purpose of making a profit which would be available for the purpose of division in the form of dividend. I think that on the true meaning of this section any body of persons authorised by statute to carry on a public undertaking which does not trade with the object of making profits for themselves or distributing profit as dividend is a public authority within the Act of 1919, but that a body of persons, authorised by a special Act to carry on one of the undertakings referred to in the definition section of the Act of 1919, is excluded from the definition of 'public authority' if the object of its trading is to make a profit for the purpose of distribution among its members. The distinction is drawn between an undertaking which is carried on for private gain and one which is carried on for the public benefit. The Water Board is, I think, trading, but in my opinion it is a body of persons who do not trade for a profit within the meaning of the section. The result, therefore, is that compensation must be assessed under the provisions of the 1919 Act and not under the Lands Clauses Acts."

Electricity (Supply) Act, 1926.

Another example of a public authority for the purposes of the Acquisition of Land Act, 1919, is the Central Electricity Board, established under the Electricity (Supply) Act, 1926. Sect. 21 enacts that "the Board may acquire land or any easements or servitudes or other rights in or over land by agreement or may be authorised to acquire land or any such right compulsorily, for the purpose of any of their powers and duties under the Act . . . and the Board shall be deemed to be a public authority for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919."

The sections conferring upon local and public authorities the right of compulsory purchase vary considerably in their wording, and in some cases an order must be obtained from Parliament or from the Minister of one of the numerous Ministries established.

Examples of such sections are the following:—

Authority to acquire, contained in Public Health Act, 1925, s. 33.

Sect. 33 of the Public Health Act, 1925, gives a local authority, which has adopted Part II. of the Act, power to prescribe an improvement line for widening streets, and after enacting that any person whose property is injuriously affected by the prescribing of an improvement line shall be entitled to obtain compensation from the local authority in respect of such injurious affection, further provides in sub-sect. (8) that

> "The local authority may purchase any land not occupied by buildings, lying between the improvement line and the boundary of the street, or any interest in such land, and the provisions of the Lands Clauses Acts, including the provisions with respect to the purchase and taking of lands otherwise than by agreement, except sects. 92 and 123 of the Lands Clauses Act, 1845, shall extend to such land or interest in land."

There are also provisions in the said section for compensation in respect of the purchase of such lands, and it

is enacted that the benefits accruing to the person to whom the same shall be payable by reason of the widening or improvement of the street, shall be fairly estimated and set off against the compensation.

Setting off the benefits of widening or improvement against the compensation due to the owner of land thus compulsorily purchased is termed "betterment."

It will be noted that, by the section quoted, the authority to purchase is given to the local authority without any necessity on their part to obtain an order made statutory by Parliament or an order requiring confirmation by a Minister.

Authority to purchase compulsorily in Town Planning Act, 1925, s. 8.

The wording of the compulsory purchase section in the Town Planning Act, 1925, differs materially from that of the Public Health Act, and is as follows:—

> Sect. 8.—"(1) The responsible authority may, for the purpose of a town planning scheme, purchase any land comprised in such scheme by agreement, or be authorised to purchase any such land compulsorily in manner hereinafter provided.
>
> "(3) The responsible authority may be authorised to purchase land compulsorily for the purposes aforesaid by means of an order submitted to the Minister and confirmed by him in accordance with Part I. of the Third Schedule to the Act."

Before the Minister confirms an order submitted to him under the section and schedule of the Act above referred to, and other Acts containing somewhat similar provisions, he orders that a public enquiry shall be held in the neighbourhood in which the land affected is situate, and all owners and parties interested can appear and make their objections to the order being made. The Inspector of the Ministry of Health who holds the enquiry reports to the Minister, who either confirms the

order unaltered or confirms it in an amended form or declines to confirm the order altogether.

The following are the material parts of an order submitted to the Minister for the purpose of the compulsory acquisition of land under the provisions of the Housing Act, 1925:—

Order for compulsory purchase, under Housing Act, 1925.

ORDER FOR THE PURPOSE OF THE COMPULSORY ACQUISITION OF LAND.

The (*insert title of the authority making the order, namely, the local authority or other body*) hereby make the following order:—

1. The provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement are, subject as hereinafter provided, hereby put into force as respects the purchase by the (*insert same authority*) of the lands described in the schedule hereto for the purposes of Part III. of the Housing Act, 1925.

2. The Lands Clauses Acts (except sect. 127 of the Lands Clauses Act, 1845) as modified, varied or amended by the Third Schedule of the Housing Act, 1925, the Acquisition of Land (Assessment of Compensation) Act, 1919, and sects. 77 to 85 of the Railways Clauses Consolidation Act, 1845, are, subject to the necessary adaptations, incorporated with this order, and the provisions of those Acts shall apply accordingly.

3. This order shall come into operation as from the date of its confirmation by the Minister of Health.

This order may be cited as the Order, 192 .

The Schedule above referred to.

Numbers on Plan deposited at the Offices of the (*authority*).	Quantity, Description and Situation of the Lands.	Owners or Reputed Owners.	Lessee or Reputed Lessees.	Occupier.

Given under the seal of (*the authority*),
this day of , 192 .

If compulsory powers are conferred on any body they can only be exercised for the purpose of the authorised undertaking. For example, under sect. 28 of the Waterworks Clauses Act, 1847, a water company is enabled to lay pipes under streets in connection with the undertaking authorised by its special Act. And it was held in *Marriott* v. *East Grinstead Gas and Water Company*, (1909) 1 Ch. 70, that the owner of the soil can sue a water company in trespass and obtain an injunction if the company lays pipes in the streets in connection with unauthorised works. The fact that the damage done is small is immaterial. (*Goodson* v. *Richardson* (1874), L. R. 9 Ch. 221.)

Compulsory order not subject to review by Court.

When an order has been confirmed by a Minister, the order is not subject to review by the Court (*Ex parte Ringer*, 25 T. L. R. 718), but a Minister may, under certain circumstances, be prohibited from confirming an order. (*Rex* v. *Minister of Health, Ex parte Davis*, (1929) 1 K. B. 619.) In that case the Minister of Health had before him for confirmation or otherwise an improvement scheme under Part II. of the Housing Act, 1925,

providing for the taking of certain lands in Derby and the demolition of the buildings thereon and the clearing of the sites. The scheme contained the following paragraph: "The whole of the cleared area shall be sold, leased or otherwise disposed of as the council may think fit or may be appropriated or used by the corporation for any purpose approved by the Minister of Health." A rule *nisi* was obtained for a writ of prohibition to issue prohibiting the Minister from confirming the order. The Divisional Court made the rule absolute, and Lord Hewart, C. J., said that the substance of the argument in support of the rule was that under the agreeable name of an improvement scheme the corporation was minded to acquire a slice of very valuable land in the heart of Derby, not for the purpose of rearrangement or reconstruction, but for the purpose, if the corporation thought fit, of resale, and, of course, resale at the highest price. One naturally asked whether the Act of 1925 contemplated any such power as that. In his opinion, if Parliament had really intended that the local authority should have such power, that power would have been expressed in unambiguous terms. It was said that the Minister had power to confirm a scheme with modifications, and that he had in fact never confirmed a scheme containing power of sale, &c., in this unqualified way, but had imported into such schemes words requiring his approval. But he (the judge) could not resist the inference that if the Minister thought he possessed the power to confirm the scheme he might use it. In his opinion the Minister did not possess such power. There was, indeed, under sect. 42 a precise and limited power to the local authority to sell or let all or any part of the area, but it was a power only for the purpose of enabling the purchasers or the lessees to carry the scheme into execution and not otherwise. The question arose whether this was a proper case for a prohibition. If the scheme were confirmed by the Minister, then, by sect. 40 (5), "the order of the

Minister when made shall have effect as if enacted in this Act." This matter had reached the last stage but one, and if check there was to be, it ought to be imposed then, and they ought to assume that the Minister might exercise his power in accordance with the petition. In these circumstances he thought the rule should be made absolute.

Prohibition lies to prevent confirmation of order by Minister.

The decision of the Divisional Court was upheld by the Court of Appeal, Lord Hanworth, M. R., in his judgment, saying that he had come to the conclusion that an improvement scheme must contain provisions for the use of the land when acquired, and that a proposal to acquire sites in an area leaving open the question of its subsequent use till after the Minister had given expression to the purpose for which it should be used was not a scheme that complied with the Act.

CHAPTER III.

NOTICE TO TREAT.

Parties to be served with notice to treat—How notice to treat is served—Time within which notice to treat must be served—In respect of what interest can notice be served—Definition of "lands"—Provisions as to easements in London County Council (Tramway Subway and Improvements) Act, 1928, and the Falmouth Water Act, 1928—Effect of service of notice to treat—Contents of notice to treat—Under what circumstances notice to treat can be withdrawn—Cases in which service of a notice to treat is unnecessary.

Notice to treat.

HAVING obtained the necessary powers to acquire land compulsorily, the acquiring party expresses its intention of putting those powers into operation by serving on the owner and other persons interested in the land a notice, termed a "notice to treat," in accordance with the provisions of sect. 18 of the Lands Clauses Act, 1845.

Lands Clauses Act, 1845, s. 18.

It will be convenient to consider that notice under the following headings:—

1. The parties upon whom it should be served.
2. The method in which it should be served.
3. The time within which it should be served.
4. In respect of what class of property it can be served.
5. The effect of service of a notice to treat.
6. Contents of a notice to treat.
7. Under what circumstances it can be withdrawn.
8. Particular cases in which a notice to treat is unnecessary.

1.—*The Parties upon whom a Notice to Treat should be served.*

Parties to be served with notice to treat.

Sect. 18 of the 1845 Act enacts that when the promoters of the undertaking require to purchase or take any of the lands which by the Lands Clauses Act, 1845, or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by that Act to sell and convey or release the same, or such of the said parties as shall, after diligent enquiry, be known to the promoters of the undertaking. In the case of a statutory company, such as a railway company, being the promoters, the names of the owners are already known, and also their interests in the land, because books of reference containing these particulars, so far as they can be ascertained, have previously been deposited at various offices in accordance with Standing Orders of Parliament previous to the introduction of the private Bill applying for authority to purchase compulsorily.

The words "all parties interested" in the above section are very comprehensive, and include all persons having a freehold or leasehold interest in the lands. Also one having an estate by way of mortgage (*Cooke* v. *L. C. C.*, (1911) 1 Ch. 604), the grantee of an annuity arising out of the land (*University Life Assurance* v. *Metropolitan Railway* (1866), W. N. 167), or one possessing an equitable estate. (*Birmingham and District Land Co.* v. *L. N. W. Railway,* 40 C. D. 268.) If, however, a tenant whose premises are taken compulsorily has no greater interest in them than as a tenant for a year, or from year to year, he is not entitled to a notice to treat under sect. 18, but his rights are defined by sect. 121. (*Syers* v. *Metropolitan Board of Works*, 36 L. T. 277; *R.* v. *Kennedy,* (1893) 1 Q. B. 533.)

By sect. 122 of the Lands Clauses Act, 1845, the onus is placed upon a party having a greater interest than a

tenant at will, who is claiming compensation in respect of any lease or grant of any such lands, to produce his lease or grant, or the best evidence in his power. If after a demand in writing by the promoters it is not produced within twenty-one days, the party is to be considered as a tenant from year to year only, and compensation paid to him upon that basis.

2.—*The method in which a Notice to Treat is served.*

How notice to treat is served.

Sect. 19 of the Lands Clauses Act, 1845, provides that:—

(a) All notices must be served either personally, or left at the last-named place of abode of the party interested, if any such can, after diligent search, be found.

In *R.* v. *Great Northern Railway Co.*, 2 Q. B. D. 151, it was held that a notice left with the party's landlord at the party's office, and not communicated to the party, was not properly served.

In *Shepherd* v. *Corporation of Norwich*, 30 C. D. 553, the conditions necessary for service of a notice to treat were discussed, and North, J., said, at p. 573, referring to service on an agent who had authority to accept service: "An agent or solicitor might have such authority, but there must be something to show that he had . . . and even if I had come to the conclusion that there was such an authority, it seems to me that an authorised agent is not a person upon whom service under the Act of a notice to treat can be effected so as to bind the principal of that agent."

(b) If such party shall be absent from the United Kingdom or cannot be found, the notice may be left with the occupier of the lands.

Before the notice, however, can be considered properly served by the same being left with the occupier of the land, enquiry must be made as to the whereabouts of the

party entitled to the notice, and if a notice is left with the occupier of part of the premises and no attempt is made to serve the party interested, the notice will not be considered as properly served (*Shepherd* v. *Norwich Corporation,* 30 Ch. D. 553), and, further, the irregularity in the service of the notice in that case was held not to be regularised by the notice being adopted by the party upon whom it should have been originally served.

(c) If there be no occupier, the notice must be affixed upon some conspicuous part of the land. Some special Acts authorising compulsory purchase specify a particular person who is to be served, and the provision in the Act must be strictly adhered to. In *Earl of Harrington* v. *Metropolitan Railway Co.*, 13 L. T. 583, the notice should have been served on the guardian, and was held invalid because it was served on the person who was the plaintiff's next friend in an action.

(d) If any party be a corporation aggregate, it is provided by sect. 20 of the Lands Clauses Act, 1845, that the notice must be left at the principal office of the business of such corporation, or, if no office can be found, it can be served on some principal member of such corporation, and such notice may also be left with the occupier of the lands, or, if there be no occupier, it is to be affixed upon some conspicuous part of the lands. (*Eastham* v. *Blackburn Railway* (1854), 23 L. J. Ex. 199; *R.* v. *Maryport and Carlisle Railway Co.*, 15 L. T. O. S. 134.)

3. *Time within which Notice to Treat must be Served.*

Time within which notice to treat must be served.

In the absence of any special provision in the private or public Act authorising the compulsory purchase, the provisions of sect. 123 of the Lands Clauses Act, 1845, apply. This section reads as follows:—

> "The powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised

after the expiration of the prescribed time, and, if no period be prescribed, not after the expiration of three years from the passing of the special Act."

In practice it will be found that all private Acts contain a section stating the numbers of years within which the compulsory powers must be exercised. The notice may be given even the day before the compulsory powers to take the land expire. *Kemp* v. *S. E. Railway* (1872), L. R. 7 Ch. App. 372, where Lord Hatherley, L.C., said:—

"A notice to treat given by a company is perfectly good so long as the company are empowered to carry into effect their works under the Act of Parliament, and no longer. It may be given the day before the compulsory powers to take the land expire, and then it will last until the time for which that land is wanted, namely, the time for making the works has also expired, but no longer."

4. *In respect of what Class of Property can a Notice to Treat be Served?*

In respect of what interest can notice be served?

The notice to treat can only be given in respect of lands which the promoters are entitled to purchase or take by virtue of the powers contained in their special Act, the Lands Clauses Act, 1845, and any Act incorporated therewith.

Definition of "lands."

"Lands" are defined in sect. 3 of the Lands Clauses Act, 1845, as extending to "messuages, lands, tenements and hereditaments of any tenure," and hereditament includes an easement. A notice to treat, however, cannot be served stating that the promoters desire to treat merely for an easement over or under land unless the special Act confers upon the promoters the right to treat for an easement only. (*Great Western Railway Co.* v. *Swindon and Cheltenham Railway Co.*, 9 A. C. 811.) This point has become of importance by reason of the

construction of underground railways and tramways under London and also the works of water companies.

The London County Council (Tramway Subway and Improvements) Act, 1928, contains the following section:—

Special provision as to easement.

"14.—(1) With respect to any of the lands shown on the deposited plans and described in the deposited books of reference in relation to this part of this Act, the Council may purchase, take and use, and the owners of and all other persons interested in any such land shall, if so required by the Council, sell to the Council an easement or right of using the subsoil and undersurface thereof for the purposes of this Act.

"(2) The powers of the Lands Clauses Acts shall extend and apply to such easement or right of user except that no such easement or right of user shall be deemed part of a house or other building or manufactory within section 92 of the Lands Clauses Act, 1845."

And the Falmouth Water Act, 1928, contains the following section:—

"*Power to acquire Easement.*

"10.—(1) The company may, in lieu of acquiring any lands for the purpose of the new works where the same are intended to be constructed underground, acquire such easements only in such lands as they may require for such purposes and may give notice to treat in respect of such easements describing the nature thereof, and the provisions of the Lands Clauses Acts shall apply to and in respect of the acquisition of such easements as fully as if the same were lands within the meaning of those Acts.

"(3) Provided that nothing in this section shall authorise the company to acquire by compulsion any such easement in any case in which the owner in his particulars of claim shall require the company to

> acquire the land in respect of which they have given notice to treat for the acquisition of an easement only. Every notice to treat for the acquisition of an easement shall either contain or be endorsed with a copy of this section."

If, however, the private Act gives such power, the promoters must serve a notice to treat in respect of the required easement under or over the land as it has been held to be not a mere easement, but an interest in land. (*Farmer* v. *Waterloo and City Railway*, (1895) 1 Ch. 527.) In this case an underground railway had power under a special Act (incorporating the Lands Clauses Act, 1845), to construct an underground railway, and it was provided in the Act that, with respect to certain lands belonging to the plaintiff, the company should not be required wholly to take them, but might "appropriate and use the subsoil and under-surface," subject to a liability to make compensation under sect. 68 of the Lands Clauses Act, 1845. The work of boring was proceeded with. No notice to treat had been served upon the owners of the subsoil, and none of the provisions of the Lands Clauses Act, 1845, had been complied with. It was held that the company were taking not merely an easement, but "land," that "appropriate" meant "appropriate" by way of purchase," and that therefore they could not "appropriate and use" the subsoil without first complying with the provisions of the Lands Clauses Act, 1845, as to the purchase of land.

In *Bush* v. *Trowbridge Waterworks Co.*, L. R. 10 Ch. App. 459, it was held that the abstraction by a waterworks company of water from a stream does not entitle a riparian proprietor below to require the company to treat under sect. 6 of the Waterworks Clauses Act, 1847, for the purchase of his interest in the stream, but only entitles him to compensation as for land injuriously affected. The plaintiff failed to prove that she was the owner or occupier

of anything taken or used by the company, or that she was anything more than a riparian proprietor injuriously affected or damaged by the operations of the company.

Although the promoters may not require the whole of a building for the purpose of their undertaking, they cannot require the owner to sell or convey to them a part of any house or other building, or manufactory, if such party is willing and able to sell and convey the whole thereof. (Sect. 92, Lands Clauses Act, 1845.) It is customary now, and has been for many years, for special Acts to contain a proviso excluding the operation of this section, but giving the owner the right to claim for the value of the land taken, and also damages in respect of the deterioration of the remaining portion due to severance. The properties to be partly taken in this way are particularly specified in a Schedule to the special Act. In *Greswolde and Williams* v. *Newcastle-on-Tyne Corporation*, (1927) W. N. 375, the case of *Richards* v. *Swansea Improvement and Tramways Co.*, 9 C. D. 425, was cited, in which Cotton, L. J., said: "We have had plenty of authority as to what the meaning of 'house' is, and although I do not at all think that we ought to construe this liberally to favour the landowner, yet we ought to construe it reasonably and fairly, having regard, of course, to previous decisions, and having regard to this, that the object and intention of this section was evidently to give a certain protection to landowners, to persons whose property was taken away from them against their will, so that no person should be required to sell a fraction only of that which ought to be regarded as a unit, when he might be very materially prejudiced by having left on his hands certain fractions only of that unit, not capable of being used efficiently when one fraction had been taken away from it." The Lord Justice also said that "that will be part of a house within the meaning of this Act of Parliament which would pass by a conveyance of the house, although not part of the structure at all, being part of the

Lands Clauses Act, 1845, s. 92.

curtilage, or land, or yard, connected with the house in such a way that it would pass within the description of a house." This definition of "house" would ordinarily include a garden let with the house.

In *St. Thomas' Hospital (Governors)* v. *Charing Cross Railway Co.*, 30 L. J. Ch. 395, Wood, V.-C., said: "The legislation requiring that no part of a house or a building shall be taken if the owner be able and willing to sell the whole, the first question is, what is the construction that ought to be given to that Act of Parliament, regard being had to authority where it exists? It has been held that the word 'house' comprises at least all that would pass by a grant of a messuage. Whether the words 'with the appurtenances' are added or not, I think, makes no great difference, for the word 'messuage,' according to old authorities, always includes not only the curtilage, but also the garden."

It will be seen that in modern statutes, such as the Housing Act, 1925, and the Town Planning Act, 1925, local authorities cannot acquire compulsorily any land which forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any house. But under the Housing Act, 1925, Sched. II., the arbitrator assessing compensation under an improvement or reconstruction scheme, may determine that, notwithstanding anything in sect. 92 of the Lands Clauses Act, 1845, that such part of any house, building or manufactory as is proposed to be taken by the local authority, can be taken without material damage to such house, building or manufactory, and if he so determines, may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the other part, or the whole of such house, building or manufactory.

A similar provision will be found in many private Acts, such as modern railway Acts and local Acts, such as the Sheffield Corporation Act, 1928.

5. *Effect of Service of Notice to Treat.*

Effect of service of notice to treat.

In *Tiverton and North Devon Railway Co.* v. *Loosemore,* L. R. 9 A. C. 480, it was stated by Lord Blackburn that the effect of giving a notice to treat was to create a relation between the promoters and the owner analogous to that of purchaser and vendor, but the price was not yet ascertained. Until that was done, the land still remained the property of the owner, in equity as well as at law, but the acquiring party had a right to have the price ascertained, and for that purpose to summon a jury, and then, when the price was ascertained (by sects. 69—80), on tender of the price, to have the land conveyed to them, or, if the landowner could not or would not make a title, to deposit the price ascertained in the bank, and execute a statutory conveyance, on which the lands vested absolutely in the promoters of the undertaking. The landowner has a correlative right; if he pleases, he may at any time before the promoters have issued their warrant for summoning a jury, have the amount of compensation settled by arbitration, and if the promoters do not issue a warrant for summoning a jury, he may by mandamus compel them to do so. (*R.* v. *Birmingham and Oxford Junction Railway Co.*, 15 Q. B. 634.) If the notice to treat itself has been given, before the expiration of the period prescribed for the exercise of the powers of the compulsory purchase of lands, these subsequent steps may be taken by either party, at least at any time before the lapse of the prescribed period within which the powers of the promoters for making and completing the authorised work must be exercised.

Relationship between promoter and owner.

Owner cannot increase the

When a notice to treat has been served upon a land-

burden of promoters after notice to treat is served.

owner, it is not competent for him to deal with any of his land either taken or injuriously affected by the company so as to increase the burden of the promoters as regards the compensation to be made in respect of such land or any of it.

In *Mercer* v. *Liverpool, St. Helen's and South Lancashire Railway Co.*, (1904) A. C. 461, the owner of land received from a railway company notice to treat for part of his land, the purchase-money being settled by agreement to include compensation for all injurious affection. Between the notice to treat and the agreement the owner granted a lease of some land near to the land purchased. The railway company exercised their powers and injuriously affected the lessee's land. It was held that the sum paid to the owner must be taken to have included compensation for the injury to the lessee's land and that the lessee was not entitled to compensation under the Lands Clauses Act, 1845.

The principles established by the last case were applied in *Cardiff Corporation* v. *Cook*, (1923) 2 Ch. 115. It was held that a landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice, and so as not to increase their obligations. He is also entitled before acceptance to withdraw and amend his claim. But where a landowner (possessed of a leasehold interest) who claimed £550 for compensation for disturbance and valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner, and can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, and the undertakers are not then at liberty to disregard the assignee and continue to treat and contract with the original landowner.

In *Dawson* v. *G. N. Railway Co.*, (1905) 1 K. B. 260, it was held that a claim for compensation in respect of an interest in lands, injuriously affected within the meaning of sect. 68 of the Lands Clauses Act, 1845, is not a claim to damages for a wrongful act, but a claim of a right to compensation for damage which might be done in the lawful exercise of statutory powers and that such a claim is capable of assignment.

Compensation is based on value at time notice is served.

Another effect of a notice to treat is that the compensation is estimated on the basis of value at the time the notice is served. The notice sterilises the land from that date, and, therefore, its condition at that time governs the measure of compensation. (*Tyson* v. *The Mayor of London*, L. R. 7 C. P. 18.)

6. *Contents of Notice to Treat.*

Contents of notice to treat.

Although it is not necessary that the notice to treat should take any particular form, it must fulfil the requirements of sect. 18 of the Lands Clauses Act, 1845.

(1) The notice must state that the promoters are authorised to purchase land. The land will be described in the schedule to the notice.

(2) The notice must demand from the owner or owners the particulars of their estate and interest in such lands and particulars of any claim the owners make in respect thereof.

(3) The notice must state that the promoters are willing to treat for the purchase of the said land and are willing to pay compensation to all parties for the damage that may be sustained by them by reason of the execution of the works.

7. *Under what circumstances can a Notice to Treat be Withdrawn?*

When can notice to treat be withdrawn?

The general rule is that once a notice to treat has been served upon an owner it cannot be withdrawn without

the consent of the owner. (*Tauney* v. *Lynn and Ely Railway*, 16 L. J. Ch. 282.) There are, however, exceptions to this rule.

Acquisition of Land Act, 1919, s. 5 (2).

(1) Under sect. 5, sub-sect. (2) of the Acquisition of Land Act, 1919, the owner should deliver a notice of claim upon the receipt of the notice to treat. This notice of claim must state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and show how the amount claimed under each head is calculated. The said sub-section further provides that, "When such a notice of claim has been delivered the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land authorised to be acquired, but shall be liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn, and the amount of such compensation shall, in default of agreement, be determined by an official arbitrator."

(2) If the promoters serve a notice to treat in respect of a portion of the land belonging to an owner and the owner serves a counter-notice, under sect. 92 of the Lands Clauses Act, 1845, on the promoters requiring them to take the whole, the promoters may withdraw the notice to treat (*Reg.* v. *L. & S. W. Railway* (1848), 12 Q. B. 775); but if not withdrawn, it is still a good notice for the whole of the premises, provided that the promoters signify their assent to the provisions contained in the counter-notice. (*Schwinge* v. *London and Blackwall Railway*, 24 L. J. Ch. 405; *Pinchin* v. *London and Blackwall Railway Co.*, 24 L. J. Ch. 417.) As the promoters may not require the whole of the premises, it is considered right that they should not be compelled to acquire at great expense an extra portion of the land

which is useless to them. (*Ashton Vale Iron Co., Ltd.* v. *Mayor of Bristol*, (1901) 1 Ch. 591.)

(3) A notice to treat served under the Metropolitan Paving Act, 1817, may be withdrawn altogether if the landowner declines to accept it, or has repudiated its validity, and in such a case no damages will be given to the landowner. In *Wild* v. *Woolwich Borough Council*, (1910) 1 Ch. 35, Cozens-Hardy, M. R., said: "A notice to treat under the Metropolitan Paving Act, 1817, does not in substance differ from a notice to treat under the Lands Clauses Act; in either case it defines the land to be taken, and if a notice to treat is given which the landowner objects to and declines to accept, and he says he will take proceedings to restrain the authority from acting upon it, it seems to me quite clear, on principles of general law, that it is competent for the local authority to say, 'You tell me this is bad; you tell me that you will take proceedings to restrain me from going on with it; very well, then, I withdraw it.' It seems to me, on general principles of law, that is a proposition which must be sound."

(4) The special or public Act may authorise the withdrawal of a notice to treat. For example, the Small Holdings and Allotments Act, 1908, provides for land being compulsorily acquired or compulsorily hired for the purpose of small holdings, and sect. 39 (8) enacts that "if, after the determination of the amount of the compensation (including, in the case of land hired compulsorily, the rent) to be paid to any person in respect of his interest in the land proposed to be compulsorily acquired, it appears to the council that the land cannot be let for small holdings or allotments, as the case may be, at such a rent as will secure the council from loss, the council may, at any time within six weeks after the determination of the amount by notice in writing, withdraw a notice to treat served on that person, or on any person interested in the land, and

Small Holdings and Allotments Act, 1908, s. 39 (8).

in such case, any person on whom such a notice of withdrawal has been served, shall be entitled to obtain from the council, compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal, and the amount of such compensation shall, in default of agreement, be determined by arbitration."

8.—*Cases in which Service of a Notice to Treat is unnecessary.*

Cases in which service of a notice to treat is unnecessary.

(a) It is unnecessary to serve a notice to treat on a person who has no greater interest in the land than as a tenant for a year, or from year to year. (*Syers* v. *Metropolitan Water Board* (1877), 36 L. T. 277.)

Lands Clauses Act, 1845, s. 121.

Sect. 121 of the Lands Clauses Act, 1845, provides for compensation to be paid to such tenant if he is required to give up possession of the land so occupied before the expiration of the term for which he holds. Such tenant is entitled to compensation for the value of the unexpired term or interest in such land, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such land be required, compensation for the damage done to him in his tenancy by severing the land held by him, or otherwise injuriously affecting the same.

(b) In cases where a local authority have agreed to purchase land for the purposes of a scheme under Part II. of the Housing Act, 1925, or for the purposes of Part III. of that Act, or have determined to appropriate land for either of those purposes, subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year, or from year to year, then, under sect. 106 of that Act, at any time after such agreement has been made, or such appropriation has been approved by the Minister, the local authority may, after giving notice of their intention so to do, enter on and

take possession, subject to certain conditions contained in that section.

If the land is purchased for the purposes of a scheme under Part II. of the Housing Act, 1925, that is to say, for improvement and reconstruction, the notice is to be not less than twenty-eight days. If the land is purchased for the purpose of Part III. of the Act, that is to say, for providing houses for the working classes, such notice must be not less than fourteen days. The notice is one requiring possession, and not a notice to treat. The compensation is provided for under sect. 106.

CHAPTER IV.

THE CLAIM.

No obligation to send in claim under Lands Clauses Act, 1845, when land is to be acquired compulsorily, but necessary if the Acquisition of Land Act, 1919, applies—Full details of claim to be given under this Act—Effect of no claim being sent under Lands Clauses Act, 1845—Procedure, sect. 21—Claim under sect. 68—Procedure if owner is absent from country or cannot be found, sect. 58—Compensation assessed by surveyor—If owner subsequently dissatisfied, to be assessed by arbitrator.

When a landowner has received the notice to treat it will be necessary for him to consider the question of his claim. The promoters may proceed to enter upon and use the land after having complied with certain formalities laid down in sect. 85 of the Lands Clauses Act, 1845, which are referred to in Chapter V., or they may take no steps for obtaining possession until the question of compensation has been settled by agreement or by one of the methods provided by the Lands Clauses Act, 1845, if the promoters be a statutory company, or by the Acquisition of Land Act, 1919, if they are a Government department or local or public authority.

Lands Clauses Act, 1845, s. 85.

In any case it will be desirable that the landowner should place the notice to treat in the hands of his legal adviser and instruct him to ascertain whether such notice has been served in pursuance of legal powers and as to whether it is a valid notice.

No obligation to deliver claim under Lands Clauses Acts.

Under the powers of the Lands Clauses Act, 1845, there is no obligation upon the landowner to deliver a claim (*Hayward* v. *Metropolitan Railway Co.*, 33 L. J.

Q. B. at p. 79), but if the acquiring party is a Government department or a local or public authority, the owner should deliver a claim, as otherwise certain consequences follow as to costs which may be detrimental to the claimant under the provisions of sect. 5, sub-sect. (2) of the Acquisition of Land Act, 1919.

But full details of claim necessary under Acquisition of Land Act, 1919, s. 5 (2).

Sect. 5 (sub-sect. (2)) provides that if the official arbitrator is satisfied that a claimant has failed to deliver to the acquiring authority a notice in writing of the amount claimed by him, giving sufficient particulars and in sufficient time to enable the acquiring authority to make a proper offer, the question as to costs is to be dealt with, as if an unconditional offer had been made by the acquiring authority at the time when, in the opinion of the official arbitrator, sufficient particulars should have been furnished, and the claimant had been awarded a sum not exceeding the amount of such offer. In other words, the powers of sect. 5 (sub-sect. (1)) as to costs are to apply, namely, that where the acquiring authority has made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by the official arbitrator to that claimant does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority, so far as such costs were incurred after the offer was made.

Acquisition of Land Act, 1919, s. 5 (1).

The said sub-section also enacts that the notice of claim must state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate headings and showing how the amount claimed under each head is calculated, not merely the lump sum claimed in respect of the land taken, but details of each item.

If the land is being acquired compulsorily by a statutory company or a body other than a Government depart-

ment or local or public authority, the Acquisition of Land Act, 1919, does not apply and the owner can deliver a claim or not, as he is advised. The claim may be split up into separate items, and the tribunal assessing the compensation can award in respect of any one item a sum in excess of the sum claimed for that item. (*Robertson* v. *City and South London Railway Co.*, 20 T. L. R. 395.) Channell, J., said that it was clear that when a claimant had stated the subject-matter of his claim he could not put before the jury a claim in respect of a new subject-matter. He could not find anything in the statute which said that when a jury thought that a claimant was entitled to more than he had claimed in respect of a subject-matter brought to the notice of the company they might not award him more than he had claimed. Of course, if the jury did so to an extravagant amount, there were methods by which their verdict could be set aside; but if they acted reasonably he could see no reason why they might not be able to award a sum in excess of the sum claimed. He was quite satisfied that there was no principle which prevented a jury, when a claimant had split up his lump sum into items, from giving more in respect of any one item than was actually claimed for that item, provided they did not exceed the whole sum claimed. He had rather more doubt as to whether the jury could give more than the amount claimed. If he does not deliver a claim, sect. 21 of the Lands Clauses Act, 1845, will apply, which provides that if for twenty-one days after the service of the notice to treat the owner fails to state the particulars of his claim in respect of such land, or to treat with the promoters of the undertaking in respect thereof, or if the owner and the promoters do not agree as to the amount of compensation to be paid for the owner's interest in the land or for any damages that may be sustained by him by reason of the execution of the works, the compensation is to be settled in the manner provided in the Act for settling

Lands Clauses Act, 1845, s. 21.

Procedure if owner fails to state claim under the Lands Clauses Acts.

cases of disputed compensation. The methods provided in the Act are a sheriff's jury or arbitration if the compensation claimed or offered exceeds £50 (sects. 23 and 68), or two justices if the claim is under £50 (sect. 22), or a surveyor if the owner cannot be found (sect. 58).

Procedure if owner makes claim under Lands Clauses Act, 1845, s. 23.

Sect. 23 applies where the claim which is made or the sum which is offered as compensation exceeds £50, provided the promoters have not entered upon the land, the amount of compensation being settled by a sheriff's jury summoned by the promoters, unless the claimant by notice in writing signifies his desire of having the matter settled by arbitration. Under this section of the Lands Clauses Act, 1845, therefore, the question as to whether the tribunal shall be a sheriff's jury or arbitration is for the decision of the claimant.

Where promoters enter and use land before assessment of compensation. Lands Clauses Act, 1845, s. 68.

If the lands have actually been entered upon or injuriously affected by the execution of the works, the procedure for assessing compensation is that provided by sect. 68 of the Lands Clauses Act, 1845, and under that section, if the party entitled to compensation desires to have the same settled by arbitration or by a sheriff's jury at his option, he must give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands, and the amount of the compensation so claimed therein.

Where owner is absent from country, and therefore has made no claim. Lands Clauses Act, 1845, s. 58.

Provision is made in the Lands Clauses Act, 1845, for compensation to be assessed where the owner of the land is either absent from the Kingdom and is prevented from treating or who cannot after diligent enquiry be found (in which cases no claim would be made), or who does not appear at the time appointed for the enquiry before the sheriff's jury after due notice has been given. Sect. 58 provides that in such cases the compensation shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose.

Valuation by surveyor. Lands Clauses Act, 1845, s. 59.

The nomination by the justices must be in writing under their hands. The surveyor then determines the amount of compensation and annexes to his valuation a declaration in writing as to the correctness thereof. (Sect. 59.) When the compensation in such cases has been ascertained by the valuation of a surveyor, it is deposited in a bank, and if the owner who is absent from the Kingdom or could not be found, returns, or is found, and is dissatisfied with the valuation, he can require that the question of compensation shall be submitted to arbitration. A notice of such request must be directed to the promoters. (Sect. 64.) The question to be submitted to the arbitrators under such circumstances will be whether the sum so deposited in the bank by the promoters is a sufficient sum or whether and what further sum ought to be paid or deposited by them. If the arbitrators award that a further sum ought to be paid or deposited by the promoters, they must pay or deposit such further sum within fourteen days after the making of the award, and in default the said sum may be enforced by attachment or recovered with costs by action in any superior Court.

Upon return, owner can require question of compensation to be re-opened. Lands Clauses Act, 1845, s. 64.

Costs in such cases.

Should the arbitrators decide that the sum deposited in the bank was sufficient, the costs of the arbitration are in their discretion, but if the arbitrators decide that an insufficient sum has been paid into the bank all the costs of and incident to the arbitration are to be borne by the promoters.

The information given by claimant under sect. 68 must be such as will assist promoters to decide what amount they will offer.

Where land has been entered upon under sect. 85 of the Lands Clauses Act, 1845, a claimant proceeding under the provisions of sect. 68 of the Lands Clauses Act, 1845, must give such reasonable information as to his interest in the land taken, as will enable the promoters to judge whether they will pay the whole claim or what amount they ought to offer; and if the claimant is occupier of the premises under a lease for years, it is not sufficient to state in the notice that he "holds under a

lease." (*Healey* v. *The Thames Valley Railway Co.*, 34 L. J. Q. B. 52.) Again, in *Fitzhardinge* v. *Gloucester and Berkeley Canal Co.*, L. R. 7 Q. B. 776, Blackburn, J., said that the object of requiring the claimant to state the amount of compensation he claimed was that the promoters might have an opportunity of considering whether they would pay him the amount he claims without arbitration or whether they will offer him a smaller sum.

CHAPTER V.

ENTRY UPON LAND BEFORE ASSESSMENT OF COMPENSATION.

Powers given for entry for temporary purposes under sect. 84, Lands Clauses Act, 1845—Entry and use of land under sect. 85—Conditions of entry—Machinery for payment into Court of deposit, sects. 86-88—Supreme Court Funds Rules, 1927—Penalty for wrongful entry—Powers given to local authorities to enter under sect. 106 of the Housing Act, 1925—If entry under sect. 85 of Lands Clauses Act, 1845, deposit in Court must be for whole of land covered by notice to treat, and not the part entered upon only.

Entry before assessment of compensation.

THE promoters may desire to enter upon and use the land which is being compulsorily acquired at an early date and before the sum payable as purchase-money or compensation has been assessed.

Lands Clauses Act, 1845, ss. 84—91.

Sects. 84 to 91 of the Lands Clauses Act, 1845, provide for such cases, and apart from the powers given by these sections the promoters would commit a trespass upon the owner's land by entry into possession without the consent of the owner and payment of compensation (*Ramsden* v. *Manchester Railway*, 1 Ex. 723), and sects. 89 and 90 of the Lands Clauses Act, 1845, further provide for penalties on promoters who enter upon lands without consent before payment of the purchase-money.

Lands Clauses Act, s. 84.

Sect. 84 of the Lands Clauses Act, 1845, enacts that the promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes of the Lands Clauses Act, 1845,

or special Act, until they have either paid to any party interested in the lands or deposited in the bank (*i.e.*, under the sections in the Act where deposits in the bank are authorised) the purchase-money or compensation agreed or awarded to be paid to the parties interested. It is provided, however, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works, it is lawful for the promoters, after giving not less than three, nor more than fourteen, days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof. If a railway company are entitled to acquire certain lands compulsorily and have carried on their work in such a way as to show the owner that they intend to enter and take possession of the land, and the owner by his silence or conduct has permitted the company to carry out their works on the supposition that they would be entitled to enter, he cannot obtain an injunction restraining them from so entering and taking possession. (*Greenhalgh* v. *Manchester and Birmingham and Brighton Railway*, 87 L. J. Ch. 75.)

Entry for temporary purposes.

Acquiescence of owner in entry.

In *Goodson* v. *Richardson* (1874), 9 Ch. App. 221, water-pipes had been laid in the soil of a highway without the consent of the owner of the soil. An injunction restraining the continuance of the pipes was granted. The facts that the soil under the highway was of no value to the owner, and that his motive for applying to the Court was not connected with the enjoyment of his land, were held not to be reasons against so granting the injunction. If the entry is effected under a belief that the promoters are protected, but such contention is not sustained, the promoters would escape the payment of penalties as prescribed in sect. 89 of the 1845 Act. (*Steele* v. *Midland Railway Co.*, 21 L. T. 387.)

Entry on and user of land under the Lands Clauses Act, 1845, s. 85.

Sect. 85 is the other section under which the promoters can enter upon and use the land before an agreement has been come to or an award made or verdict given of the purchase-money or compensation to be paid by them in respect of land.

It provides that they may enter upon and use such lands without having first paid or deposited the purchase-money or compensation upon the fulfilment of certain conditions.

Conditions to be fulfilled by promoters before entry.

Those conditions are that they must deposit in the bank by way of security either—

(a) the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands and who shall not consent to such entry; or

(b) such a sum as shall, by a surveyor appointed by two justices in the manner provided in the case of parties who cannot be found (see sect. 59), be determined to be the value of such lands or of the interest therein which such party is entitled or enabled to sell and convey.

The promoters must also give to such party a bond under the common seal of the promoters if they be a corporation, or, if not a corporation, under the hands and seals of the promoters or any two of them with two sufficient sureties to be approved by two justices in case the parties differ, in a penal sum, equal to the sum so to be deposited, conditioned for payment to such party or for deposit in the bank for the benefit of the parties interested in such land, of all such purchase-money or compensation as might afterwards be determined to be payable to the parties interested in respect of the lands entered upon, together with interest at 5 per cent. per annum calculated from the time of entry on the said lands, until such purchase-money or compensation shall be paid to such party or deposited in the bank for the benefit of the parties interested in such lands.

Deposit in Court must include interest at 5 per cent.

If the said deposit is made by way of security and such bond is delivered or tendered to the party who does not consent to the entry by the promoters, the promoters can lawfully enter upon and use such lands without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of the Lands Clauses Act or the special Act.

Machinery for payment into Court. Lands Clauses Act, 1845, ss. 86—88.

Sects. 86, 87 and 88 provide the machinery by which payment into Court is to be made and may be summarised as follows: The money is to be deposited in the Bank of England under the jurisdiction of the Court of Chancery and upon a consent for lodgment of the Accountant-General and placed to the credit of the parties interested.

The money so deposited is to remain in the bank by way of security to the parties whose land shall have been entered upon for the performance of the bond given by the promoters, and eventually the Court may order the said money to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall have been deposited. The exact methods of payment in and payment out are regulated by the Rules of the Supreme Court and the Supreme Court Funds Rules, 1927.

Supreme Court Funds Rules, 1927.

Promoters to pay penalties if they enter without complying with provisions of sects. 84 or 85.

Should the promoters or any of their contractors wilfully enter upon and take possession of any land which shall be required to be purchased or permanently used for the purposes of the special Act without consent, or without having made payment or without having deposited money by way of security as required by sect. 85, the promoters are, as previously stated, under the very heavy penalties provided in sect. 89. The amount of the penalty and the amount to be recovered in respect of damage to the land is recoverable before two justices.

Lands Clauses Act, 1845, s 90.

Sect. 90 enacts that on the trial of any action for any such penalty, the decision of the justices shall not be held conclusive as to the right of entry on such lands by the promoters.

If the promoters have complied with all the conditions referred to in sect. 85 or any special conditions in the special Act giving the promoters the authority to enter upon and take possession of any lands required for the purpose of the undertaking, and the owner or occupiers or any other person refuses to give up possession or hinders the promoters from entering upon the said lands, the promoters can issue their warrant to the sheriff to deliver possession of the land to the person appointed in the warrant to receive the same; and the sheriff then delivers possession of the land to the person named in the warrant. If such a course becomes necessary, the costs of the proceedings will be payable by the person who is in possession and who refuses to deliver up possession of the land.

The promoters can enter upon possession of the land at any time within the period fixed by the special Act for the exercise of the compulsory powers, and are entitled to remain in possession although the authorised work could not be completed within the time limited by the Act. (*Tiverton and N. Devon Railway* v. *Loosemore* (1884), 9 A. C. 480.) In *Salisbury* (*Marquis of*) v. *G. N. Railway* (1852), 17 Q. B. 840, it was held that entry on land under sect. 85 was not the exercise of a power of compulsory purchase, but the exercise of a power for carrying that purchase into effect.

Entry under Lands Clauses Act, 1845, s. 85, does not vest ownership in promoters.

Further, the effect of entry under sect. 85 is not to vest the ownership of the land in the promoters. (*Wing* v. *Tottenham and Hampstead Junction Railway Co.* (1868), 3 Ch. App. 740.)

Some Acts of Parliament—for example, the Housing Act, 1925—give local authorities a right to enter upon land it is intended to acquire compulsorily, without com-

plying with the requirements of sects. 84—90 of the Lands Clauses Act, 1845. Sect. 106 of the Housing Act, 1925, is as follows:— Housing Act, 1925, s. 106.

> "(1) When a local authority are by an order confirming a scheme under Part II. of this Act, or by an order made and confirmed under Part III. of the Act, authorised to purchase land compulsorily for the purpose of the scheme, or of Part III. of this Act, then, at any time after notice to treat has been served, the local authority may, after giving to the owner and occupier of the land such notice as is hereinafter mentioned, enter on and take possession of the land, or such part thereof as is specified in the notice, without previous consent or compliance with sects. 84—90 of the Lands Clauses Act, 1845, but subject to the payment of the like compensation for the land of which possession is taken, and interest on the compensation awarded, as would have been payable if those provisions had been complied with."

Again, sub-sect. (2) of the same section provides that if a local authority have agreed to purchase land for the purposes of an improvement and reconstruction scheme under Part II. of the Housing Act, 1925, or for providing houses for the working classes under Part III. of the same Act, or have determined to appropriate land for either of those purposes, subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year, or from year to year, then, after an agreement has been made or such appropriation has been approved by the Minister of Health, the local authority may, after giving to the person, in the case of the land being purchased for a scheme under Part II. of the Act, not less than twenty-eight days' notice, and in the case of land purchased for the purposes of Part III. of the Act, not

less than fourteen days' notice, enter on and take possession of the land without previous consent, but subject to the payment to such person in possession of the like compensation, with such interest thereon as aforesaid, as if the local authority had been authorised to purchase the land compulsorily, and such person had in pursuance of such power been required to quit possession before the expiration of his term or interest in the land, but without the necessity of compliance with sects. 84—90 of the Lands Clauses Act, 1845.

It will be seen, therefore, that sects. 84—90 of the Lands Clauses Act, 1845, are sometimes excepted from incorporation in Acts providing for compulsory purchase of lands, and particularly in the cases referred to, a local authority is given power to acquire the interest of those in possession in a compulsory manner, although the main interest in the land is being acquired by agreement.

In some cases where land has been entered upon without complying with the provisions of the Lands Clauses Act, 1845, damages for trespass can be obtained, and they are based upon the amount of depreciation in the value of the land by reason of the alleged entry. (*Hosking* v. *Phillips,* 18 L. J. Exch. 1.) If an injunction restraining the promoters from entry be asked for, damages may be awarded instead of the injunction. (*Lockwood* v. *L. & N. W. Railway,* 19 L. T. 68.) In *Willey* v. *S. E. Railway,* 18 L. J. Ch. 201, it was held that although entry on land by the promoters may have been originally wrongful owing to some informality, when the error is corrected the possession will be looked upon as a rightful continuance.

If a notice to treat is given but the land is not actually entered upon, there is no "taking" within the meaning of sect. 68. (*Reg.* v. *Manley Smith, Re Church and London School Board,* 67 L. T. 197.)

Deposit under Lands Clauses Act, 1845, s. 85, must cover whole of land although only part has been entered upon.

If a notice to treat be given in respect of certain land and any part of it is entered upon, a deposit must be made of sufficient amount to cover the value of the whole, and not only of the part actually entered upon. (*Barker* v. *N. Staffordshire Railway Co.*, 10 L. T. (O. S.) 390; 11 L. T. (O. S.) 43, 345, 451.)

CHAPTER VI.

PROCEDURE WHEN LAND IS COMPULSORILY ACQUIRED BY A STATUTORY COMPANY.

(A) Surveyors.

(B) Justices.

When land is taken by statutory company, Lands Clauses Act, 1845, applies—Sect. 21 applies if no particulars of claim are given or the parties fail to agree—Tribunals under the Act.

A. Surveyor, if owner absent—How appointed—Declaration by surveyor—Two surveyors assess if owner under disability—Sect. 9 applies to injurious affection as well as when land is taken—Assessment by surveyor under sect. 85 and, in respect of common land taken, sect. 106.

B. Assessment by two justices—Sect. 22, where sum claimed does not exceed £50—One magistrate sufficient in London, Metropolitan Police Court Act, 1839, s. 14—Justices decide amount only and not title to land or right to compensation—What disqualifies a justice—Sect. 121, justices to settle compensation payable to tenant having no greater interest than for a year or from year to year—Questions for justices under that section—Justices to apportion rents under sect. 119.

The procedure after the notice to treat has been served will depend upon whether the party serving the notice is a statutory body authorised to acquire land compulsorily under the powers contained in its special Act or a Government department or local or public authority.

When land is taken by statutory company, the Lands Clauses Acts apply.

In the former case, the procedure will be governed by the provisions of the Lands Clauses Act, 1845, together with any provisions contained in the special Act. In the case of Government departments or local or

When lands taken by a Government department or local or public authority, Acquisition of Lands Act, 1919, applies.

public authorities the provisions of the Acquisition of Land Act, 1919, will apply, together with such provisions of the Lands Clauses Act, 1845, and amending Acts, as are consistent with the provisions of the Acquisition of Land Act, 1919. Such provisions of the Arbitration Act, 1889, as are consistent with and supplemental to the Acts above referred to will also apply to all the cases dealt with in this chapter. (Arbitration Act, 1889, s. 24.)

It will be convenient to divide the subject into:—

I. Where land is being acquired compulsorily by a statutory company or body of persons for gain or profit.

II. Where land is being acquired compulsorily by a Government department or a local or public authority.

Lands Clauses Act, 1845, s. 21, applies if no particulars of claim are given, or parties fail to agree.

I. Sect. 21 of the Lands Clauses Act, 1845, enacts that if for twenty-one days after the service of the notice to treat the party upon whom it was served does not state particulars of his claim in writing in respect of the land scheduled to the notice to treat or otherwise negotiate with the promoters of the undertaking in respect of such land, or if the two parties shall not agree within that time as to what compensation shall be paid to the owner for his interest in the land or for any damage that may be sustained by him by reason of the execution of the works, the amount of compensation is to be settled in accordance with the provisions of the Act relating to cases of disputed compensation.

Tribunals under the Lands Clauses Act, 1845.

Four tribunals are named in the Act:—

(A) Surveyor.

(B) Justices.

(C) A Jury.

(D) Arbitration.

(A) *Assessment of Compensation by a Surveyor.*

Assessment of compensation by surveyor.

(1) Where owner is absent from country or does not appear.

Lands Clauses Act, 1845, s. 58.

(1) Under sect. 58 of the Lands Clauses Act, 1845, if a party in respect of whose land a notice to treat has been served is absent from the Kingdom and is for such reason prevented from treating with the promoters, or does not appear at the time appointed for an enquiry before the sheriff's jury after due notice has been given to him of the date of such enquiry, the purchase-money or compensation to be paid for the lands to be purchased, and the compensation to be paid for any permanent injury to such lands is to be assessed by an able practical surveyor nominated by two justices in writing.

Sect. 59. Appointment of surveyor.

Sect. 60. Declaration by surveyor.

Before the surveyor enters upon making the valuation, he must, in the presence of the justices or one of them, make the following declaration and sign the same at the foot:—

> "I, A. B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.
>
> A. B.
>
> "Made and subscribed in the presence of ."

Sect. 61.

The said nomination as surveyor and declaration as to impartiality is to be annexed to the valuation, and is to be preserved by the promoters of the undertaking, and they are under an obligation to produce the valuation and other documents, on demand, to the owner of the lands comprised in the valuation, and to all other parties interested therein. All the expenses of and incident to such valuation are to be borne by the promoters of the undertaking.

(2) Sect. 9. Two surveyors, when party under disability.

(2) Again, under sect. 9 of the Lands Clauses Act, 1845, where lands are purchased or taken belonging to parties who are under some disability or incapacity, and who have not the power to sell or convey such lands other than those given them by the Lands Clauses Act, 1845,

or the special Act, the purchase-money or compensation payable for any permanent damage or injury to any such lands is not to be less (except where the same shall have been determined by the verdict of a jury, or by an arbitrator, or by the valuation of a practical surveyor appointed by the justices) than shall be determined by two practical surveyors, one of whom shall be appointed by the promoters of the undertaking and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as two justices shall, upon application of either party after notice to the other party, for that purpose nominate.

Each of such two surveyors, if they agree, and if not, the surveyor nominated by the said justices, must annex to the valuation a declaration in writing subscribed by them or him of the correctness thereof, and all such purchase-money or compensation is to be deposited in the bank for the benefit of the parties interested.

This section applies to cases where land is being purchased by agreement from persons under disability. It is therefore necessary that the purchase-money and compensation shall be a fair one, agreed upon by the two surveyors.

Sect. 9 applies to cases where there is injurious affection, although no land is taken from claimant.

In *Stone* v. *Mayor, Aldermen and Burgesses of Yeovil*, L. R. 2 C. P. D. 99, it was held that sect. 9 applied to compensation for injuriously affecting land not taken by the promoters, as well as to compensation for taking land; the words "injury to any *such* lands" meaning lands held by persons under disability. It was further held that sect. 68 of the Lands Clauses Act, 1845, which provides for compensation where lands have been entered upon by promoters, and where land that has not been taken has been injuriously affected by the execution of the authorised works, applies to persons under disability as well as to others, and therefore a surveyor appointed under sect. 9 can assess compensation where a claim for injurious affection only is made. Sect. 9 applies also to cases where the party upon whom the notice to treat has been served is not

Lands Clauses Act, 1845, s. 7.

in a position to convey the whole estate in the land; for example, a tenant for life and all parties under disability mentioned in sect. 7 of the Lands Clauses Act, 1845.

(3) Lands Clauses Act, 1845, s. 85.

Surveyor settles value when promoters enter under s. 85.

(3) As has been explained in Chapter V., if the promoters desire to enter upon and use land under the conditions provided in sect. 85 of the Lands Clauses Act, 1845, a surveyor, appointed by two justices, determines the value of the land being compulsorily acquired, such value being paid into Court.

(4) Lands Clauses Act, 1845, s. 106.

Surveyor settles value of common land where no committee of commoners has been appointed.

(4) Again, under sect. 106 of the Lands Clauses Act, 1845, if common land be taken compulsorily, and no committee of commoners be appointed, as provided by the Act, to treat with the promoters in respect of the land, the compensation is assessed by a surveyor appointed by two justices.

(B) *Assessment of Compensation by Justices.*

Assessment by justices.

(1) Lands Clauses Act, 1845, s. 22.

Where no agreement is come to and amount claimed does not exceed £50.

(1) Sect. 22 of the Lands Clauses Act, 1845, provides that where no agreement is arrived at between the promoters and the owners, or parties under the Act enabled to sell and convey or release any lands taken or required for, or injuriously affected by, the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, and the compensation claimed does not exceed £50, the same is to be settled by two justices. It will be noted that the sum claimed gives the justices jurisdiction. By an agreement between the parties, however, an arbitrator can assess the compensation although the amount claimed is under £50. (*Collins* v. *South Staffordshire Railway Co.*, 21 L. J. Exch. 247.)

By agreement between parties, an arbitrator has jurisdiction when amount claimed is less than £50.

In metropolitan area one stipendiary magistrate has jurisdiction.

In the metropolitan area or other place where a stipendiary magistrate is appointed, he has power to act in any matter in which two justices would ordinarily be required. (Metropolitan Police Courts Act, 1839, s. 14; Stipendiary

Magistrates Act, 1858, s. 1; and Summary Jurisdiction Act, 1879, s. 20 (10).)

Justices decide amount, not title to the land or right to compensation.

The question as to whether the claimant has a right to the compensation or a title to the land the subject-matter of the enquiry, is not a matter to be considered by the justices. Brett, M. R., in *R.* v. *Edwards*, 13 Q. B. D. 586, said: "First of all, the claimant and the company must endeavour to agree, but if they do not agree, then sect. 22 says, if the compensation claimed shall not exceed £50, the same (that is the compensation, and not the title) is to be settled by two justices. Sect. 24 makes it lawful 'for any justices, upon the application of either party with respect to any question "not of title nor of right—but of disputed compensation," by the Act "authorised to be settled by two justices," to summon the other party before two justices at a time to be named,' and the section then goes on to state that upon the appearance of such party, 'it shall be lawful for such justices to hear and determine.' What? Not the whole dispute between the parties, or all the questions between the parties, but 'such question,' that is, the question 'of disputed compensation,' and that alone."

Justice disqualified if he has pecuniary interest in the matter.

A justice is disqualified from acting if he has any pecuniary interest in the matter he is adjudicating upon, unless the parties, with full knowledge of the facts, assent to such justice acting. In *Wakefield Local Board of Health* v. *The West Riding and Grimsby Railway Co.*, L. R. 1 Q. B. 84, it was held that a definition of the word "justice" in the Railway Consolidation Act, 1845, s. 3, as "a justice who shall not be interested in the matter," did not render an interested justice incompetent to act if the parties, being aware of the interest, waive it.

(2) Lands Clauses Act, 1845, s. 121.

Justices to settle compensation when person has no

(2) Justices are also appointed to act under sect. 121 of the Lands Clauses Act, 1845, when compensation is claimed by any person having no greater interest in the land than as a tenant for a year, or from year to year. If such person is required to give up possession of any lands

greater interest than as tenant for a year or from year to year.

occupied by him before the expiration of his term or interest in the same, he is entitled to compensation for the value of his unexpired term or interest in such lands, and for any allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him or his tenancy by severing the lands held by him, or otherwise injuriously affecting the same, and the amount of such compensation is to be determined by two justices, in case the parties differ about the same. Upon payment or tender of the amount of such compensation, all such persons are to respectively deliver up to the promoters of the undertaking, or to persons appointed by them to take possession of them, any such lands in their possession, for the purposes of the special Act. This section provides the only means by which the class of tenant referred to in it can obtain any compensation, and the provisions of sect. 68 of the Lands Clauses Act, 1845, do not apply to them. (*Knapp* v. *London Chatham and Dover Railway*, 32 L. J. Ex. 236.)

A tenant having no greater interest than as a tenant for a year, or from year to year, is not entitled to receive a notice to treat. (*R.* v. *Kennedy*, (1893) 1 Q. B. 533.)

A notice, however, must be served upon the tenant requiring him to give up possession of the lands occupied by him on a date certain before his term has expired.

Two questions for justices, has tenant been given proper notice, and what amount of compensation?

Two questions have to be decided by the justices, namely, has a proper notice been given, and what amount of compensation the tenant is entitled to?

If land be taken from a tenant having a term from year to year, and he claims not only the value of his unexpired term, but also damages for severance of land on either side (his interest in such land being more than as a tenant from year to year), and also damages for injurious affection of the land on either side by the execution of the works or otherwise, the justices have no jurisdiction, and the case comes within sect. 68 of the Lands Clauses Act, 1845.

(*Bexley Heath Railway Co.* v. *North*, (1894) 2 Q. B. 579.)

(3) Justices to apportion rent under s. 119.

(3) Sect. 119 of the Lands Clauses Act, 1845, enacts that if any lands shall be comprised in a lease for a term of years unexpired, part of which lands only shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not agreed upon, such apportionment is to be settled by two justices.

Under this section there is no power which enables the lessee to call upon the lessor to settle any arrangement between them, the only persons who can call the lessor and lessee together before the justices being the promoters. (*Slipper* v. *Tottenham and Hampstead Junction Railway Co.*, L. R. 4 Eq. 112.) In cases coming within the Lands Clauses Act, 1845, an arbitrator has no power to make an apportionment of rent, but where land is taken by a Government department, or a local or public authority, the rent is apportioned by an official arbitrator under the Acquisition of Land Act, 1919.

CHAPTER VII.

PROCEDURE WHEN LAND IS COMPULSORILY ACQUIRED BY A STATUTORY COMPANY.

(C) Sheriff's Jury.

(D) Arbitration.

C. If sum claimed or offered exceeds £50, claimant can decide tribunal, sheriff's jury or arbitration—If claimant does not request arbitration, sheriff's jury to be summoned by promoters—Promoters must give ten days' notice before issuing warrant to sheriff—"Sealed" offer may be made by promoters—Common jurors or special jurors—Procedure before jury—Procedure if claimant does not appear at enquiry—Verdict of jury—Regulation of Railways Act, 1868—Provision as to trial in High Court—Verdict, costs, judgment—Quashing verdict for excess of jurisdiction, *certiorari*.

D. Arbitration—Claimant's right to, where land is taken—If absent owner returns and is dissatisfied with assessment of surveyors, sect. 64—Questions for arbitrators in such case—Arbitration under sect. 68 where land is injuriously affected—Arbitration where superfluous lands are sold under sect. 130—Provisions as to arbitration procedure in sects. 25-57, Lands Clauses Act, 1845, and in the Arbitration Act, 1889—Special cases stated under sects. 7 and 19 of that Act—Practice.

(C) *Procedure before Sheriff's Jury.*

The two methods of arriving at the amount of compensation money by surveyors and justices are applicable in the special cases already referred to, but under ordinary circumstances, if the claim is for more than £50, the tribunal to assess the compensation is either a sheriff's jury or arbitration.

Lands Clauses Act, 1845, ss. 23 and 68. Claimant can choose tribunal, sheriff's jury or abitration.

Under the provisions of sects. 23 and 68 of the Lands Clauses Act, 1845, the claimant has the right to elect whether the compensation shall be determined by the one or the other. Sect. 23 provides that if the compensation claimed or offered exceeds £50, and the claimant desires to have the matter settled by arbitration, and signifies such desire by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury, stating in the notice the nature of the interest in respect of which the claimant claims compensation, and the amount of the compensation claimed, then the matter is to be settled by arbitration. If, however, the claimant does not give such notice to the promoters, or if the matter having been referred to arbitration, the arbitrators or umpire fail to make their or his award within three months, or if no final award shall be made, the question of compensation is to be settled by a sheriff's jury. Special provisions as to compulsory acquisition by railway companies will be found in Chapter XII. The period of three months referred to, so far as it concerns the umpire, commences from the date when the arbitration was placed in his hands. (*Skerratt* v. *North Staffordshire Railway Co.*, 17 L. J. Ch. 161.)

If claimant does not express desire for arbitration, tribunal to be sheriff's jury, to be summoned by sheriff.

Lands Clauses Act, 1845, s. 38. Promoter to give ten days' notice before issuing warrant to sheriff.

Sect. 38 provides that before the promoters issue their warrant for summoning a jury they must give not less than ten days' notice to the claimant of their intention to do so, and in such notice they must state what sum of money they are willing to give for the interest in such land sought to be purchased by them from the claimant, and for the damage sustained by the claimant by the execution of the works.

Sects. 23 and 38 of the Lands Clauses Act, 1845, apply only to cases where the promoters of an undertaking are about to take or injuriously affect land in the possession of the claimant, but do not apply to cases where the promoters have already taken possession of or injuriously affected land, but for which no compensation has been

made. Sect. 68 applies to cases where the promoters have already taken possession. (*Railstone* v. *York, Newcastle and Berwick Railway Co.*, 19 L. J. Q. B. 464.)

Lands Clauses Act, 1845, s. 38. "Sealed offer" of promoters.

The offer by the promoters referred to in sect. 38 is known as the "sealed offer" of the promoters. The amount of the offer is not disclosed to the jury, but the acceptance or otherwise of the amount by the claimant may have a bearing upon the incidence of costs. The offer may be accepted at any time before the verdict of the jury has been given, and if so accepted, the jury must return a verdict for the amount offered. (*R.* v. *Westminster (High Bailiff), Ex parte London County Council*, (1903) 2 K. B. 189.) If a claimant under sect. 68 elects to have the compensation decided by a jury, the promoters may make a sealed offer of compensation at any time before the notice of the time and place of enquiry is given to the claimant. (*Hayward* v. *Metropolitan Railway*, 33 L. J. Q. B. 73.) In the same case it was held that where the claimant, under sect. 68, claims one sum as compensation for premises being injuriously affected, and another in respect of loss of business, it is not necessary in the offer to mention one lump sum, but the promoters may offer one sum as compensation in respect of the premises having been injuriously affected, and another in respect of loss of business, and if the jury give the same sum in the aggregate as the sum offered, although they reverse the position of the two sums, the claimant cannot get the costs of the enquiry. Sect. 46 requires that the said notice of the time and place of the enquiry must always be given ten days before the date of the hearing, and this provision applies whether the proceedings be under sect. 68 or sect. 23.

Lands Clauses Act, 1845, s. 46.

Lands Clauses Act, 1845, s. 39. Summoning jury.

The procedure to be adopted by the promoters with regard to the issuing of the warrant to the sheriff, requiring him to summon a jury for the purpose of assessing compensation, is to be found in sect. 39 of the Lands Clauses Act, 1845. The warrant must be under the common seal of the promoters if they be a corporation, and if not a

corporation, under the hands and seals of such promoters, or any two of them.

By sect. 5 of the Lands Clauses Act, 1845, the word "sheriff" is interpreted to include under-sheriff, or other legally competent deputy, and means the sheriff or under-sheriff of the county, city, borough or place where the land is situated. In practice the under-sheriff presides at the enquiry. Lands Clauses Act, 1845, s. 5. "Sheriff" includes under-sheriff.

Upon receipt of the warrant the under-sheriff summons a jury of twenty-four indifferent persons duly qualified to act as common jurors in the Supreme Court, and out of the twenty-four he draws a jury of twelve. Common jurors.

Either party may have the matter decided by a special jury, provided that if the claimant desires a special jury, he must give notice of his desire to the promoters before they have issued their warrant to the sheriff. The promoters must then request the sheriff to nominate a special jury for the trial, instead of a common jury. Special jurors.

The proceedings at the trial are similar to those in the High Court. The under-sheriff presides, the witnesses and jury are sworn on oath, the claimant's case is opened and witnesses are called in support of the claim. After examination of these witnesses by the claimant, or his legal representative, and cross-examination on behalf of the promoters, the case of the promoters is placed before the jury. Addresses on behalf of the promoters and claimant follow, the under-sheriff sums up, and the jury find their verdict. The jury may award more than the amount claimed in respect of any particular item. (*Robertson* v. *City and South London Railway Co.*, 20 T. L. R. 395.) Procedure before sheriff's jury.

If either party makes a request in writing, the under-sheriff must summon before him any person considered necessary to be examined as a witness, and at a like request the under-sheriff must order the jury, or any six or more of them, to view the place or matter in controversy. If any person summoned to give evidence at the enquiry,

who has been offered reasonable expenses, fails to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuses to be examined on oath touching the subject-matter in question, he may forfeit £10. (Sect. 45 of Lands Clauses Act, 1845.)

Lands Clauses Act, 1845, s. 45.

If the claimant does not appear at the time appointed for the enquiry, such enquiry is not proceeded with, but the compensation is ascertained by a surveyor appointed by two justices. (Sect. 47 of Lands Clauses Act, 1845.)

Procedure if claimant does not appear at enquiry. Sect. 47.

As to the verdict of the jury, sect. 49 of the Lands Clauses Act, 1845, enacts that when the enquiry relates to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury must deliver their verdict separately for the purchase-money of the lands and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner, by reason of the severing of the lands taken from the other lands of the owner, or otherwise injuriously affecting such lands by the exercise of the powers of the Lands Clauses Act, 1845, the special Act, or any Act incorporated therewith.

Sect. 49. Verdict.

Jury to deliver verdict separately for (a) purchase-money of the lands, (b) sum awarded for severance.

In *In re East and West India Docks, &c. and Bradshaw*, 17 L. J. Q. B. 362, it was held that the words requiring a separate verdict in respect of purchase-money and injurious affection were directory and not conditional, and that, therefore, if the parties did not request separate assessment, the verdict would not be set aside.

In cases where land is being acquired compulsorily by a railway company, under the provisions of the Regulation of Railways Act, 1868, s. 41, the company can apply to a judge of the High Court asking that the question may be tried as an issue in the High Court. If this application is granted the jury must, in giving their verdict, separate the amount awarded as value of the land and the amount awarded for injurious affection, as provided by

Provision in Regulation of Railways Act, 1868, for trial in High Court.

sect. 49 of the Lands Clauses Act, 1845. The jury having given their verdict, the under-sheriff must give judgment for the amount of the verdict and in the terms of such verdict.

Costs of proceedings before sheriff's jury. Lands Clauses Act, 1845, s. 51.

As to the costs of proceedings when the compensation is assessed by a sheriff's jury, sect. 51 of the Lands Clauses Act, 1845, provides that if the amount given by the verdict of the jury is for a larger sum than the sum which has been previously offered by the promoters, namely, the sealed offer, the claimant will be entitled to the whole of the taxed costs of the proceedings. If, however, the amount awarded by the jury is less than the sum previously offered by the promoters, each party will pay its own costs and half the official costs, which are the costs incurred by the under-sheriff in calling together the jury and of taking the enquiry.

It will be noted that if land be taken compulsorily by a statutory company, whatever be the verdict of the jury, the claimant can never be ordered to pay the costs of the promoters.

Verdict of jury conclusive as to amount.

The verdict of a sheriff's jury on an inquisition is conclusive as to amount, but the question whether land has been actually damaged or injuriously affected is still open as a defence if an action be brought to enforce the verdict of the jury and the judgment of the under-sheriff. (*Chapman* v. *Monmouthshire Railway and Canal Company*, 27 L. J. Exch. 97.)

Sect. 50 provides that the sheriff (in practice the under-sheriff) before whom the enquiry is held shall give judgment for the purchase-money or compensation assessed by the jury, and the verdict and judgment must be signed by him and duly recorded among the records of the county.

If the jury go beyond the powers given them in the Lands Clauses Act, 1845, or the special Act, or any Act incorporated therewith, the promoters can move the High

Writ of *certiorari* to bring up verdict and judgment, with a view to quash in whole or in part.

Court for a writ of *certiorari* calling upon the sheriff to bring up the verdict of the jury in order that it may be quashed in whole or in part.

The application for a writ of *certiorari* must be supported by an affidavit containing the history of the proceedings, and setting forth the grounds upon which the Court is moved that the writ shall issue. The proceedings are on the Crown side, and the procedure is governed by the Crown Office Rules, 1906.

Crown Office Rules, 1906.

Certiorari.

(D) *Arbitration.*

Arbitration.

This method of assessment of compensation is provided for in sects. 23, 64, 68 and 130 of the Lands Clauses Act, 1845.

Lands Clauses Act, 1845, s. 23.

Claimant's right to arbitration when amount claimed or offered exceeds £50.

(1) Under sect. 23 of the Lands Clauses Act, 1845, if the compensation claimed or offered where land is authorised to be taken, but not actually entered upon, exceeds £50, the claimant has a right to have the case decided by arbitration, but must signify his desire for arbitration by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury. The notice must contain information as to the nature of the interest in respect of which such party claims compensation, and must also state the amount claimed.

Lands Clauses Act, 1845, s. 64.

Right of owner whose compensation was assessed in his absence by a surveyor under Lands Clauses Act, 1845, s. 58, to have matter re-opened before arbitration.

(2) Under sect. 64 of the Lands Clauses Act, 1845, it is provided that if owing to the absence of the owner from the kingdom, or if the owner after diligent search cannot be found, the compensation is assessed by a surveyor under sect. 58, and if upon return of the absent owner, or the eventual appearance of the owner who could not be found, these persons are dissatisfied with the valuation of the surveyor, the said owner, before applying to the Court of Chancery for payment or investment of the moneys deposited there under sects. 76—78 of the Lands Clauses Act, 1845, may give notice in writing to the

promoters requiring the question of such compensation to be submitted to arbitration.

The question to be submitted to the arbitrators in such case is whether the sum deposited by the promoters was sufficient, or whether any further sum ought to be paid or deposited by them. (Sect. 65.)

Question for arbitrators in such case.

Lands Clauses Act, 1845, s. 65.

If the arbitrators award that a further sum shall be paid or deposited, such further sum must be paid or deposited within fourteen days after the making of the award, the penalty for non-performance of this provision being attachment or a right on the part of the claimant to recover the same with costs by action in the High Court. (Sect. 66.)

Costs.

Lands Clauses Act, 1845, s. 66.

If the arbitrators decide that the sum deposited originally was sufficient, the costs of and incident to the arbitration are in the discretion of the arbitrators. If, however, the arbitrators decide that a further sum should have been deposited, all the costs of and incident to the arbitration must be borne by the promoters.

(3) The provisions of sect. 68 are somewhat similar, so far as they provide the tribunals to assess purchase-money and compensation, as the provisions of sect. 23.

Lands Clauses Act, 1845, s. 68.

The section provides that every party who is entitled to compensation in respect of any lands, or any interest therein, which shall have been taken for, or injuriously affected by, the execution of the works, and to whom the promoters have not made satisfaction under the powers of the Lands Clauses Act, 1845, or special Act, or any Act incorporated therewith, may have the compensation settled by arbitration, or by a sheriff's jury, as he thinks fit, provided the sum claimed is in excess of £50.

Compensation for lands taken or injuriously affected by execution of works.

If the party desires arbitration he must give a notice in writing to the promoters of such desire, and the notice must (as was also provided in sect. 23) state the nature of the interest in such lands in respect of which he claims compensation, and the amount claimed in respect thereof.

Claimant may demand arbitration.

It is further provided that unless the promoters be willing to pay the amount claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of that notice, the same shall be settled by arbitration. The alternate method of compensation provided for by the said section is a sheriff's jury, and upon the claim being made, the promoters must, within twenty-one days, agree to pay the amount claimed, or issue their warrant to the sheriff to empannel a jury.

Lands Clauses Act, 1845, s. 68.

Sect. 68 applies to cases where the promoters have entered upon the land under sect. 85, and also to cases where no land belonging to the party claiming is actually taken by the promoters, but whose lands have been injuriously affected by the execution of the works.

Lands Clauses Act, 1845, s. 127.

Superfluous lands.

(4) Under sect. 127 of the Lands Clauses Act, 1845, it is provided that unless a prescribed period is mentioned in the special Act, the promoters must, absolutely, sell and dispose of all superfluous lands within ten years after the expiration of the time limited by the special Act for the completion of the works.

The lands must first be offered for sale to those persons from whose lands the superfluous land was originally severed, unless the land be situated within a town, or be land built upon or used for building purposes.

Lands Clauses Act, 1845, s. 130.

Price to be paid for superfluous lands to be decided by arbitration.

Sect. 130 provides that if any person entitled to such pre-emptive rights desires to purchase any such lands, and that person and the promoters do not agree as to price, the same is to be ascertained by arbitration, and the costs of such arbitration are to be in the discretion of the arbitrators.

Arbitration sections of Lands Clauses Act, 1845, do not apply to superfluous land arbitration.

In *Jones* v. *South Staffordshire Railway* (1869), 19 L. T. 603, and the *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, (1901) 2 Ch. at p. 46, it was stated that the arbitration sections of the Lands Clauses Act, 1845, did not apply to an arbitration to ascertain the price of superfluous land under sect. 130.

Special provisions in Lands Clauses Act, 1845, as to arbitration procedure (sects. 25—37).

Apart from the sections already referred to, the sections of the Lands Clauses Act, 1845, which are applicable to arbitration procedure (with the exception of those held under sect. 130, to which the provisions of the Arbitration Act, 1889, are applicable) are sects. 25 to 37 inclusive.

Arbitration Act, 1889.

Such sections of the Arbitration Act, 1889, however, as are not inconsistent with the provisions of the Lands Clauses Act, 1845, or provisions contained in the special Act, are applicable to arbitrations under the Lands Clauses Act, 1845.

Lands Clauses Act, 1845, s. 25.

Under sect. 25 of the Lands Clauses Act, 1845, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, must nominate and appoint an arbitrator. Such appointment must be delivered to the arbitrator, and is deemed a submission to arbitration on the part of the party by whom the same is made.

Appointment of arbitrator deemed a submission to arbitration.

Appointment of arbitrator cannot be revoked without consent of the other side.

After such appointment neither party has any power to revoke the same without the consent of the other, and the death of either party does not revoke the appointment. If for the space of fourteen days after a dispute has arisen, and after a request in writing, in which shall be stated the matter required to be arbitrated upon, has been served by one party on the other party to appoint an arbitrator, such last-mentioned party fails to appoint an arbitrator, the party which has appointed an arbitrator may appoint the same arbitrator to act on behalf of both parties, and in such case the award of such single one shall be final.

Result of failure to appoint an arbitrator.

Effect of death of arbitrator.

If the arbitrator appointed dies, or becomes incapable before the matter referred to him has been decided, the party appointing such arbitrator may nominate and appoint in writing another person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fails to do so, the remaining or other arbitrator may proceed *ex parte*. (Sect. 26.)

Appointment of umpire.

When more than one arbitrator has been appointed they shall, before entering upon the arbitration, nominate and appoint in writing an umpire to decide on any matter on which they shall differ, or which may be referred to him under the provisions of the Lands Clauses Act or special Act.

If such umpire dies or becomes incapable of acting, the two arbitrators at once, after such death or incapacity, appoint another umpire in his place, whose decision is final. (Sect. 27.)

If the arbitrators refuse or shall, for seven days after request of either party, neglect to appoint an umpire, the Board of Trade shall, on application of either party, appoint an umpire, and the decision of such umpire on matters on which the arbitrators differ, or which were referred to him under the Lands Clauses Act or the special Act, shall be final. (Sect. 28.)

Lands Clauses Act, 1845, s. 29.

Death or incapacity of single arbitrator.

If when a single arbitrator has been appointed he dies or becomes incapable of acting before he has made his award, the matters referred to him must be dealt with as if such arbitrator had not been appointed. (Lands Clauses Act, 1845, s. 29.) In other words, a new arbitrator must be appointed.

If when more than one arbitrator has been appointed either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of that arbitrator is as effectual as if he had been a single arbitrator appointed by both parties.

Award to be made within twenty-one days of appointing last arbitrator or umpire.

When more than one arbitrator be appointed and, although they act, they fail to make their award within twenty-one days after the day on which the last arbitrator was appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the arbitration shall be determined by the umpire.

Extension of time of delivery of award.

In practice it is very usual to have the period of twenty-one days extended. If the parties do not agree to do so

the time can be extended by the Court. (*In re Dare Valley Railway*, L. R. 4 Ch. 554.)

Umpire to be unbiassed.

The submission referred to in sect. 25 of the Lands Clauses Act, 1845, is a submission by consent. (*Ex parte Harper*, L. R. 18 Eq. 539.) The umpire appointed by the arbitrators should be a person known to be unbiassed. (*In re Elliot and the South Devon Railway Co.* (1848), 2 De G. & Sm. 17.)

If an amount claimed for compensation under the Lands Clauses Act, 1845, s. 68, is not paid or agreed to be paid within twenty-one days after the date on which the claim was sent to the promoters, the claimant should attempt to procure the appointment of a single arbitrator before nominating one on his own behalf. (*Yates* v. *Mayor of Blackburn Corporation*, 29 L. J. Ex. 447.)

It has been held that the appointment of a single arbitrator by one of the parties to act for both parties is invalid, unless the claimant actually appoints an arbitrator to act for him, and the promoters are informed of his appointment. (*Bradley* v. *L. & N. W. Railway Co.*, 20 L. J. Ex. 3.)

Arbitrator's power to order production of documents.

The arbitrators or the umpire have power to call upon the promoters for any documents in the possession or power of either party which they or he may think necessary, and may examine the party or their witnesses on oath, and administer the oaths necessary for the purpose. (Sect. 32.) It was held in *Wakefield* v. *Llanelly Railway and Dock Co.*, 12 L. T. 509, that it is usual for evidence in cases before arbitrators to be given upon oath, unless the parties agree that the oath shall be unnecessary.

Arbitrator or umpire to make declaration.

Before the arbitrators or umpire enter upon an arbitration under the provisions of the Lands Clauses Act, 1845, they must make the following declaration in the presence of a justice:—

> "I, A. B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my

skill and ability, hear and determine the matters referred to me under the provisions of the (*name special Act*). "Signed A. B.

"Made and subscribed in the presence of ."

Lands Clauses Act, 1845, s. 33.

Such declaration must be annexed to the award. (Sect. 33.) Having made their award, the arbitrators or umpire give notice to the parties that the award is ready,

Promoters must take up award.

and it is the duty of the promoters to take up the award, paying the fees of the arbitrators or umpire, and if the claimant takes up the award instead of allowing the promoters to do so, he cannot recover from the promoters the fees he has paid to the arbitrators or umpire. (*Earl of Shrewsbury* v. *Wirral Railways Committee*, (1895) 2 Ch. 812.)

With regard to the costs of the arbitration proceedings, sect. 34 of the Lands Clauses Act, 1845, provides that all the costs of the arbitration and incident thereto to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

No time is specified in the Lands Clauses Act, 1845, as to when the promoters should make a sealed offer when the question of compensation is about to be determined by arbitration, but it was held in *Fitzhardinge* v. *Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 778, that an offer made when the arbitrator was appointed and before the arbitration commenced was a good offer, and was not invalidated by a previous offer having been made on the assumption that the matter was going to be determined by a sheriff's jury.

A sealed offer when made in a case to be determined by a sheriff's jury can be accepted by the claimant at any

time before the jury return their verdict. It would appear, therefore, that a sealed offer in a case before an arbitrator can be accepted at any time before he publishes his award.

The promoters having obtained the award must retain the same, and on demand, at their own expense, furnish a copy of the same to the claimant, and must at all times on demand permit the claimant or his agent to examine the original award. The promoters may be compelled to take up the award by mandamus. (*R.* v. *South Devon Railway* (1850), 15 Q. B. 1043.) The award may include in one sum the price of the land taken and the damages for injurious affection, and should also provide for the costs of and incident to the arbitration. The Court will not entertain an objection that the award is contrary to the evidence. (*In re East and West India Docks Co., Birmingham Junction Railway Co. and Bradshaw*, 17 L. J. Q. B. 362.) In addition to the arbitration provisions contained in the Lands Clauses Act, 1845, such powers of the Arbitration Act, 1889, are applicable to arbitrations under the Lands Clauses Act, 1845, as are not inconsistent with the arbitration provisions of the latter Act. A few of those provisions applicable to arbitration under the Lands Clauses Act, 1845, may be mentioned.

Mandamus to compel promoters to take up award.

Sect. 7 of the Arbitration Act, 1889, enacts that arbitrators or an umpire acting under a submission shall, unless the parties express a contrary intention, have power (a) to administer oaths or take the affirmation of the parties and witnesses appearing; (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; (c) to correct in any award any clerical mistake or error arising from any accidental slip or omission.

Arbitration Act, 1889, s. 7.

Power of arbitrators.

Stating award in form of special case.

Sect. 19 of the Arbitration Act, 1889, provides that any arbitrator or umpire may at any stage of the proceedings under a reference, and shall if so directed by a Court or judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. It should be noted that

Arbitration Act, 1889, s. 19.

Special case, during any stage of proceedings, for opinion of the High Court.

this section has been repealed by the Judicature Act, 1925, in so far as it applied to arbitrations under orders of Court. It, however, still applies to cases under the Lands Clauses Act, 1845.

The special case stated in this section is one of a question of law arising during the reference. There is no appeal from the decision of the Divisional Court (*In re Knight and Tabernacle Permanent Building Society*, (1892) 2 Q. B. 613), and the costs occasioned by the special case under this section are costs in the arbitration, and cannot be dealt with by the High Court. If an application is made to a judge under this section to compel the arbitrator to state a special case it is made to the judge in chambers, and an appeal lies to the Divisional Court without leave. (*Long* v. *G. N. & City Railway*, (1902) 1 K. B. 813; and *Re Frere & Co. and North Shore Mill Co. Arbitration*, (1905) 1 K. B. 366.)

If the special case stated under sect. 19 is stated for the opinion of a judge in the Chancery Division, it will be assigned by ballot at the arbitration department, Central Office, after which it must be filed at the filing department, Central Office.

A special case for the opinion of the Divisional Court under sect. 19 is filed at the Crown Office department, when it is set down in the Crown paper for hearing by three judges. Although the opinion of the High Court upon a special case stated by an arbitrator under the Arbitration Act, 1889, with regard to a question of law arising in the course of the reference cannot be the subject of an appeal, yet, if that opinion is erroneous, an award expressed to be founded on that opinion can be set aside as containing an error of law apparent on the face of the award. (*British Westinghouse Electric and Manufacturing Co., Ltd.* v. *Underground Electric Railway Co. of London, Ltd.*, (1912) A. C. 673.)

Arbitration Act, 1889, s. 7.

When the award is made in the form of a special case under sect. 7 of the Arbitration Act, 1889, previously referred to, the case will be set down at the Crown Office

department, and will be entered in the special paper for hearing by a single judge, from whose decision an appeal lies to the Court of Appeal without leave. The Court of Appeal has power under the Arbitration Act, 1889, to deal with the costs of an appeal on an award stated in the form of a special case for the opinion of the Court. (*In re E. Gonty and the Manchester, Sheffield and Lincolnshire Railway*, (1896) 2 Q. B. 439.)

Award in form of special case. Procedure.

The time for making an award may from time to time be enlarged by order of the Court, or a judge, or by agreement between the parties whether the time for making the award has expired or not. (Sect. 9.) Where there has been great delay the Court may refuse to enlarge the time. (*Re Dare Valley Railway*, L. R. 4 Ch. 554.)

Arbitration Act, 1889, s. 9.

In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire under sect. 10 of the Arbitration Act, 1889. The cases are those in which there is misconduct on the part of the arbitrator, or excess of jurisdiction, or where the arbitrator himself admits that there is a mistake.

Under the provisions of sect. 11 of the Arbitration Act, 1889, where an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

Under sect. 12, an award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect.

The questions relating to the enforcing of awards, remitting and setting aside awards, and authorities relating to those matters will be found dealt with in Chapter XVIII.

CHAPTER VIII.

PRINCIPLES OF ASSESSMENT OF COMPENSATION WHEN LAND IS COMPULSORILY ACQUIRED BY A STATUTORY COMPANY.

Findings of Sir Leslie Scott's Commission—Different principles if land is taken by Government department or local or public authorities —Compensation for purchase and severance—Jury to give separate assessment if required—Principles—Value to owner—Probable use to which owner could have put land to be considered—Special adaptability —No compensation for possible improvement owing to use by promoter—Betterment in special cases—Compensation for any damage naturally flowing from the taking—Loss of goodwill—Compensation for severance or injurious affection when land is taken—Cases—Compensation owing to user of land taken—Damage must be caused by what is done on the land actually taken—Extra sum owing to acquisition being compulsory—Reason for.

The Lands Clauses Act.

SINCE 1919 it has become necessary to distinguish between the principles to be applied when a statutory company, formed to carry on an undertaking such as a railway company, or a water company, or gas company, acquires land compulsorily, and those to be applied when the land is acquired by a Government department or a local or public authority. In 1917 a committee was appointed by the Prime Minister of the day, under the chairmanship of Mr. Leslie Scott, K.C., M.P. (now Sir Leslie Scott, K.C., M.P.), to consider and report upon the defects in the existing law and practice involved in the acquisition and valuation of land for public purposes, and to record any changes that might be desirable in the public interest. The committee issued two reports in 1918, and a third report

Findings of Sir Leslie Scott's Committee.

in 1919, the references to those reports in Parliamentary Papers being 1918 Cmd. 8998, 1918 Cmd. 9229, and 1919 Cmd. 156 respectively.

Different principles apply if land is taken by Government department or local or public authorities.

The Acquisition of Land Act, 1919, was subsequently passed, but this Act has no application to the class of case considered in this chapter, that Act only being applicable to cases where land is compulsorily acquired by Government departments, local or public authorities. The committee also reported: "We are of opinion that the Lands Clauses Acts are out of date, and fail to give effect to the requirements of the community of to-day, and therefore think that they should be repealed and replaced by a fresh code." The principles to be applied by the tribunals in assessing compensation in the cases considered in this chapter are those laid down in the various private Acts authorising the statutory undertakings, together with those contained in the Lands Clauses Act, 1845, and the judicial interpretations of the wording of the sections of that Act.

Before proceeding to consider the principles to be applied, it is necessary to show in respect of what matters compensation can be assessed.

Lands Clauses Act, 1845, s. 63.

Compensation for purchase-money and damage by severance.

Sect. 63 of the Lands Clauses Act, 1845, provides that in estimating the purchase-money or compensation to be paid by the promoters of the undertaking, regard shall be had by the justices, arbitrators or surveyors, as the case may be, not only to the value of the land purchased or taken by the promoter of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands *by reason of the severing of the lands taken from other land* of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of the Lands Clauses Act, 1845, or the special Act, or any Act incorporated therewith.

Injurious affection.

It will be noted that the above section applies to assessment of compensation by justices, arbitrators or surveyors. Sect. 49 applies to assessment by juries, and provides that when such enquiry relates to the value of land to be

Lands Clauses Act, 1845, s. 49.

Verdict of jury to be given separately for value of land and damage due to severance, if required.

purchased, and also to compensation claimed for injury done or to be done to the land held therewith, the jury are to deliver the verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or for any interest therein, belonging to the party with whom the question of disputed compensation shall have arisen, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the land by reason of the severing of the land taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of the Lands Clauses Act, 1845, or the special Act, or any Act incorporated therewith.

With reference to the foregoing sections, in *Ex parte East and West India Docks, Birmingham Junction Railway and Bradshaw*, 17 L. J. Q. B. 362, Denman, C. J., said, that in respect of arbitration there is no requirement in the statute for separate assessments, and that in respect of verdict upon inquisition such words as are in sect. 49 are directory and not conditional, and, therefore, no mandamus would lie to the sheriff directing him to issue his precipe for a new enquiry.

The principles applying where land belonging to a claimant is actually taken will be found to be somewhat different to those applying when no land is taken from a claimant, but his land is injuriously affected by the execution of authorised works on the land of another person whose land is being taken compulsorily. The former cases are dealt with in this chapter.

Where land is taken or a notice to treat has been served of an intention to take compulsorily, the following principles apply:—

Value of land to owner at time notice to treat is given.

I. *The value of the land is to be given to the owner, and it must be the value to the owner at the time the statutory notice to treat is given, and not its value to the promoters. Stebbing* v. *Metropolitan Board of Works*, L. R. 6 Q. B. 37, was a case in which the defendants were

empowered by statute to acquire compulsorily the whole of one and part of two other churchyards. The land was to be used partly to form a new street, and partly for the erection of buildings. It was held that the plaintiff was entitled to compensation only for the loss that he had sustained by being deprived of his interest in the churchyards, and not according to the value of the land to the defendants after they had acquired it. Lush, J., said: "The question is not what the persons who take the land will gain by taking it, but what the person from whom it is taken will lose by having it taken from him."

In the *City and South London Railway* v. *St. Mary Woolnoth and St. Mary Woolchurch Haw*, (1903) 2 K. B. 728; (1905) A. C. 1, the House of Lords allowed compensation to be assessed on the basis that, although the lands were then the site of a church, they might cease to be so and become available for building. The distinction between this case and *Stebbing* v. *Metropolitan Board of Works* is, that under sect. 17 of the Union of Benefices Act, 1860, a church may be sold provided the consent in writing of the Archbishop of the diocese, Bishop of the diocese, the Archdeacon and the Secretary of State for the Home Department are obtained, whereas under the same section, the sale or letting of any churchyard or burial ground is not permitted under any circumstances. (See also *L. C. C.* v. *Greenwich Corporation*, (1929) 1 Ch. 305.)

In *South Eastern Railway and L. C. C. Contract*, (1915) 2 Ch. 252, Eve, J., said: "The following proposition may, I think, be treated as established by authorities as binding on this Court:—

"(1) The value to be ascertained is the value to the vendor, not its value to the purchaser. Value to vendor.

"(2) In fixing the value to the vendor all restrictions imposed on the user and enjoyment of the land in his hand are to be taken into account, but the possibility of Possible user.

such restriction being modified or removed for his benefit is not to be overlooked.

Market price not conclusive.

"(3) Market price is not a conclusive test of real value.

Increase in value only to user by promoters to be disregarded.

"(4) Increase in value consequent on the execution of the undertaking for or in connection with which the purchase is made must be disregarded.

Potentialities to be considered.

"(5) The value to be ascertained is the price to be paid for the land with all its potentialities, and with all the use made of it by the vendor.

Relation of vendor and purchaser.

"(6) The true contractual relation of the parties—that of purchaser and vendor—is not to be obscured by endeavouring to construe it as another contractual relation altogether—that of indemnifier and indemnified."

Eve, J., also epitomised his judgment in the following terms, which are of general application:—

"Where an owner of two contiguous pieces of land forming an area suited, and it may be best suited, for development and use as one building site sells under compulsion a part of one piece as a part of that piece, and without any reference to his interest in the other piece, the purchase price of the land so contracted to be sold must be ascertained without reference to the vendor's interest in the other piece, and is not to be ascertained by deducting the value of what is left to the vendor of the two pieces after the sale from their aggregate value immediately prior to the sale."

In *London County Council* v. *Wilson's Executors*, (1916) 1 K. B. 837, it was held that, where under a scheme made under the Housing of the Working Classes Act, 1890 (now repealed and partly re-enacted by the Housing Act, 1925), land was taken compulsorily, the date at which the arbitrator had to ascertain its value was not the date of the advertisement of the scheme, but that it was a question as to whether the proper date for assessing the value was the date of the arbitration, or, if a notice to treat has been served, the date of that notice.

II. *In assessing its value, the probable use to which the owner might have put the land must be taken into consideration.* Probable use by vendor.

In *Baily* v. *The Isle of Thanet Light Co.*, (1900) 1 Q. B. 722, a railway had taken land which had been recently purchased for the purpose of erecting a school. The land was specially suitable for the purpose, and there was no other suitable land in the neighbourhood for the purpose. It was held that, in assessing the compensation payable to the claimants, their intention to use the site for a school ought to be taken into consideration, although they had done nothing towards carrying that intention into execution.

In *Ripley* v. *G. N. Railway*, L. R. 10 Ch. App. 435, a railway company took land on which cotton mills probably would have been built. The owner had other land, on which he had built a reservoir, from which water might be supplied to such cotton mills when built. In ascertaining the compensation payable, the umpire received evidence as to the profit which might have been derived from the supply of water to the mills when built, and awarded compensation for the loss of those prospective profits. It was held that the umpire was entitled to give compensation under this heading. Sir G. Mellish, L. J., said: "The first question is, whether the umpire is entitled to enter into the question how far Mr. Ripley is damaged by reason of losing the sale of the water from his reservoir to mills which would thereafter be built upon the property which was taken by the railway company. I think that the umpire was clearly entitled to go into that question. This is not a case like *Ricket* v. *Metropolitan Railway Co.*, L. R. 2 H. L. 175, and the various cases in which the Court have had to consider how far a person, no part of whose land is taken, can recover on account of his land being injuriously affected. In this case a considerable quantity of Mr. Ripley's land is actually taken. Then in

assessing the value of that property the umpire is entitled to consider how much the other property of Mr. Ripley's has been damaged by reason of his property being taken. . . . It seems to me quite clear that the property in the reservoir being prejudiced by reason of his other land being taken by the railway company, that loss is a proper head of compensation."

Very frequently agricultural land is taken compulsorily. The value of such land may be assessed on the basis that in the future it might have become land that would be built on. (*Reg.* v. *Brown* (1867), L. R. 2 Q. B. 630.)

In *Gough and the Aspatria, Silloth and District Joint Water Board*, (1904) K. B. 417, it was held that where land is compulsorily taken for the purpose of making a reservoir, the fact that the land has peculiar natural advantages for supplying a district or area, apart from any value created or enhanced by the scheme or Act for appropriating the water to a particular local authority, may be taken into consideration in the assessment of compensation, and it is not necessary that it should be proved that the land could be similarly used by other specified authorities.

Special adaptability.

In *Lucas and the Chesterfield Gas and Water Board*, (1909) 1 K. B. 16, it was laid down that where land is compulsorily taken for the purpose of making a reservoir, and the land has a special adaptability for the construction of a reservoir, the tribunal assessing the compensation is not precluded from taking into consideration the special adaptability as an element of value by reason of the fact that the land could not be utilised for the construction of a reservoir by other possible competitors unless statutory powers for its compulsory purchase were first obtained, and that in determining the value arising from such special adaptability, the tribunal should have regard to the contingent value arising out of the possibility of the land coming into the market when required for the particular purpose, and not to the realised possibility arising from

the fact of the promoters having obtained statutory powers for the construction of the reservoir.

Fletcher Moulton, L. J., after expressing the view that the expression "special adaptability" was not a happy one, because special adaptability for some purpose or other is the very basis of the market value of *all* land, except, perhaps, land that in all respects falls below the average, said that the decided cases laid down the principle that where the special value exists owing to the particular purchaser who has obtained powers of compulsory purchase, it cannot be taken into consideration in fixing the price, because to do otherwise would be to allow the existence of the scheme to enhance the value of lands to be purchased under it. But when the special value exists also for other possible purchasers, so that there is, so to speak, a market real, though limited, in which that special value goes towards fixing the market price, the owner is entitled to have this element of value taken into consideration just as he would be entitled to have the fertility or the aspect of a piece of land capable of being used for agricultural purposes . . . nor was it, in his opinion, an answer to say that the purchasers must necessarily be persons possessing parliamentary powers, and that none can exist at the moment except the one who is actually exercising his compulsory powers. In the case of waterworks for public supply, promoters must always arm themselves with parliamentary powers, since distribution itself would otherwise be impracticable, but if by its prudence and forethought a public authority had by private negotiations secured a desirable site for a reservoir for the water supply of its own district, it would not be in accordance with the practice of Parliament to refuse to it the powers securing to it effective use for that purpose.

In *Sidney* v. *North Eastern Railway Co.*, (1914) 3 K. B. 629, part of the main line of a railway was laid upon

land in which the railway company had only a leasehold interest. As the lease was about to expire, the company obtained statutory powers to acquire it compulsorily. If the said land had been offered for sale in the market there might have been competition between the railway company and two colliery companies in order to secure it. It was held that for the purpose of assessing the compensation payable to the landowner, the arbitrator was entitled to take into consideration the special adaptability for railway purposes arising out of the possible competition between the colliery owners and the railway company, but not that arising from the fact of the existence upon the land of an integral part of the railway company's main line.

Rowlatt, J., further held that where there is no competition, or where the price has been raised by biddings to a point at which competition ceases, there is no room for the application of the doctrine of special adaptability.

In *Cedars Rapids Manufacturing and Power Co.* v. *Lacoste*, (1914) A. C. 569, *In re Lucas* was approved, and Lord Dunedin said: "For the present purpose it may be sufficient to state two brief propositions. (1) The value to be paid for is the value to the owner as it existed at the date of the taking, not the value to the taker. (2) The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that fall to be determined."

No compensation owing to use to which promoters are going to put the land.

III. *No compensation can be recovered based upon the probable improvement in the value of the land taken owing to the use it is going to be put to by the purchasers.*

Sir W. Page Wood said, in *Penny* v. *Penny*, L. R. 5 Eq. 227: "As to the value of the interest, it appears to me clear that the plaintiff's interest is not to be treated as having been increased through an Act of the Board of Works. . . . It is not the interest which has been acquired by the Board that has to be estimated, but the value of the

interest taken from the person with whom the Board deals. . . . The scheme of the Act I take to be this: that every man's interest shall be valued, *rebus sic stantibus*, just as it occurs at the very moment when the notice to treat is given. Any difference in the result which is due to the accident of the property being taken by a public body is not to be thrown into the compensation fund."

Value at the notice to treat is given.

In some private and public Acts of Parliament there are provisions allowing the purchaser to set off a claim for betterment or improvement in value of the land left to the vendors, or to the carrying out of the undertaking against the compensation due to the claimant in respect of the land taken, or other land injuriously affected, but if there be no such provisions, the promoters are not entitled to set off any enhanced value of land belonging to the same owner owing to the execution of the authorised works upon land actually taken from the owner under the special Act. Unless, therefore, betterment is provided for in the special Act or a public Act, no betterment can be considered by the tribunal.

Betterment can be claimed by promoters only in special cases.

IV. *Compensation may be claimed in respect of any damage naturally flowing from the "taking" under statutory power.* This principle admits compensation for loss of business, if that business is carried out on premises compulsorily acquired. In effect it is a claim for loss of goodwill, which means a probable diminution in business by reason of the premises on which the business was carried on being compulsorily taken. In *Ricket* v. *Metropolitan Co.* (1865), 34 L. J. Q. B. 257; L. R. 2 H. L. 175, a distinction is drawn between compensation for goodwill being claimed when the land upon which the business is carried on is actually taken, and when such a claim is made when no land is taken in that case.

Damage must naturally flow from the "taking."

Compensation for any damage naturally flowing from the "taking."

Loss of goodwill.

Erle, C. J., said, referring to the cases cited during the hearing, that the general conclusion he drew from this review was that there was no precedent of compen-

No compensation for injury to goodwill where no land is taken.

sation for an injury to goodwill, or for a loss of profit in the business carried on upon the land where no land is taken; that the compensation for the goodwill of business carried on upon land actually taken was granted expressly on the ground that the occupier was expelled therefrom, and was thereby distinguished from a claim by an occupier from whom nothing had been taken.

When assessing compensation for loss of goodwill, the possibility or otherwise of the claimant being able to get other suitable premises in the neighbourhood is a fact to be considered. In *Bidder* v. *North Staffordshire Railway Co.*, 4 Q. B. D. 412, Bramwell, L. J., said: "It is as though a house in a street were taken where a man carried on business, and there were other houses in the same street to be had to which the business could be transferred with no loss of goodwill. "In such a case no compensation for goodwill ought to be given. If the rent was greater, that ought to be compensated for; if the lease was shorter, that ought; and if other circumstances of loss or precariousness, they ought."

Sometimes a sum is given for re-instatement. It would apply to such a case suggested by Bramwell, L. J.

Difficulties sometimes arise in connection with the compulsory acquisition of licensed premises. In *Chandler's Wiltshire Brewery Co. and the London County Council*, (1903) 1 K. B. 569, licensed premises were taken by the County Council for the purpose of the Housing of the Working Classes Act, 1890. The underlessee of the brewery company, who were the assignees of a lease of the premises, entered into a covenant with the brewery company under which he tied himself to the brewery company with regard to sole supply by the brewery company of the beer consumed on the premises.

The arbitrator determined that if the brewery company were entitled to be compensated in respect of the damage sustained by reason of the determination of the covenant,

then the amount to be paid was £653, but if they were not so entitled, the compensation was to be only ten shillings.

The Court held that in estimating the compensation payable in respect of the interest of the lessors in a house, let as a public-house and taken compulsorily for the purposes of the Act, a covenant "tying" the house must be taken into consideration.

Compensation for injurious affection or severance where land is taken.

V. *A few cases will show the principles which apply to the compensation to be awarded in respect of injurious affection or severance to other land where some land of the claimant is taken.*

In *Stockport, Timperley and Altringham Railway Co.*, 33 L. J. Q. B. 251, a railway company took some land of a Mr. Leigh under their special Act, and proposed to use it for the construction of a railway upon it so close to a cotton mill belonging to Mr. Leigh that, by reason of the passing of the trains and the danger of fire from the engines, the building was rendered less suitable for a cotton mill, and could only be insured at an increased premium, and was rendered of less saleable value.

It was held that Mr. Leigh was entitled to compensation in respect of the mill being so injuriously affected, and that the rule laid down in *Glover* v. *North Staffordshire Railway Co.*, 20 L. J. Q. B. 376, that compensation could only be given for that which, unless sanctioned by the private statute, would otherwise have been an actionable wrong, had no application to cases where the act complained of was done on the claimant's own land which was taken away from him by statute.

Compton, J., said: "Where the damage is occasioned by what is done upon other land which the company have purchased, and such damage would not have been actionable as against the original proprietor, as in the case of sinking of a well by percolation, the company has a right to say: 'We have done what we have a right to do as

proprietors, and do not require the protection of any Act of Parliament; we therefore have not injured you by virtue of the provisions of the Act; no cause of action has been taken away from you by the Act.'

"Where, however, the mischief is caused by what is done on the land taken, the party seeking compensation has a right to say: 'It is by the Act of Parliament, and the Act of Parliament alone, that you have done the acts which have caused the damage. Without the Act of Parliament everything you have done and are about to do in the making and using the railway would have been illegal and actionable, and is therefore matter for compensation according to the rule in question.'"

Compensation for damage due to user of land taken.

The *City of Glasgow Union Railway* v. *Hunter*, L. R. 2 H. L. Sc. 78, was a case in which Mr. Hunter was the owner of property in Glasgow, part of which fronted Eglington Street and the other faced Eglington Place. On the part facing Eglington Street there was a large building, the ground floor consisting of shops, the upper floors being dwelling-houses. Behind the building was ground fronting Eglington Place, upon which was erected some outbuildings. The back land referred to was taken for the purposes of the railway. The railway also built a railway bridge over Eglington Street close to the front premises of Mr. Hunter. The House of Lords held that compensation could not be claimed by reason of the noise and smoke of trains, although the back part of the premises had been taken.

Lord Chelmsford said: "As no part of the respondent's property has been injured by anything done on his land, over which the railway runs, his right to compensation appears to me to be precisely the same as if none of his land had been taken by the company."

The case of the *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418, arose out of the construction of the Thames Embankment at Westminster under the Thames Embankment Act, 1862.

The Duke of Buccleuch was the owner of a mansion on the banks of the Thames with a large garden frontage. The river had previously flowed into the garden, but owing to the river being banked a large strip of dry land was formed, and a public road was made between the banked river and the garden. The Duke was deprived of the actual use of the river frontage, and a causeway which ran from his garden to the river, used at low water for the purpose of embarking or landing was also taken away.

The Duke was given compensation for the loss of the use of the river frontage and the consequent loss of privacy, and the increase of dust and noise by the creation of a road and embankment.

Hannen, J., said, referring to sect. 63, that it appeared to him that the words of that section were wide enough to include damages much more extensive than those under consideration; but considering them as only applying to damage strictly *ejusdem generis* with severance, he could not doubt that the damage arising to the owner of property from the junction of his lands with others converted to a purpose detrimental to him, was *ejusdem generis* with the damage arising from having his lands severed from others. It was obvious that the mischief which would arise from having the embankment converted into a road would be much greater than it would have been if it had been converted into a garden. If the Act of Parliament had not been passed, the plaintiff would have had it in his power, by refusing to part with his rights, to prevent the land being converted into a road. It seemed just that if his power to prevent the mischief being done to him was taken away by law, he should receive compensation according to the measure of the injury inflicted upon him. His lordship further said: "It may well be that there is a hardship in awarding no compensation to a person who sustains loss for the public benefit unless his lands are taken, but there is a manifest difference between the position of a person whose lands are taken and that of one

whose lands are not. The former was possessed of something without which the proposed public purpose could not be accomplished; but he could have prevented the carrying out of the undertaking if he had not been deprived of his power by Act of Parliament, whereas the person whose land was not taken had no such power, and could not have hindered the appropriation of lands not his own to any purpose not amounting to a nuisance. The Legislature has recognised this right of property, and the power growing out of it, as a fact, but has guarded against its abuse by compelling its possessor to avail himself of it only as means of obtaining a fair compensation for real damage."

The principle laid down in the *Stockport Case* was again followed in *Cowper Essex* v. *Local Board of the District of Acton, in the County of Middlesex*, L. R. 14 A. C. 153, and the facts were shortly these. Under statutory powers, and under the Lands Clauses Act, 1845, the local board for the district of Acton gave Mr. Cowper Essex a notice to treat for the purchase of about five acres of his land at Acton for the purpose of providing for the sewerage and the disposal and utilisation of the sewage of the district. In addition to the value of the land taken, the jury gave a further sum for all damage sustained or to be sustained by reason of the injuriously affecting the other lands of the claimant by the exercise by the local board of their statutory powers. The latter award came before the House of Lords for consideration. Lord Halsbury said: "Two propositions have now been conclusively established. One is that land taken under the powers of the Lands Clauses Act, 1845, and applied to any use authorised by the statute, cannot by its mere use, as distinguished from the construction of works upon it, give rise to a claim for compensation. But a second proposition is, it appears to me, not less conclusively established, and that is, that where part of a proprietor's land is taken from him, and the future use of the part

so taken may damage the remainder of the proprietor's land, then such damage may be an injurious affection of the proprietor's other lands, though it would not be an injurious affection of the land of neighbouring proprietors, from whom nothing had been taken for the purpose of the intended works."

Lord Watson in the same case, after referring to the *Buccleuch Case* and *City of Glasgow Union Railway* v. *Hunter,* said: "It appears to me to be the result of these authorities, which are binding upon this House, that a proprietor is entitled to compensation for depreciation of the value of his other lands, in so far as such depreciation is due to the anticipated legal use of works to be constructed upon the land which has been taken from him under compulsory powers."

Again, Bramwell, L. J., took the same view, saying: "It seems to me most reasonable that the owner of property should not be made to sell for its mere value a piece of his land, the possession of which, and the use to be made of it, will do the rest of his land damage to ten times the value of that taken."

And Lord Watson said: "I shall not attempt to lay down any general rule, but I am prepared to hold that, where several pieces of land owned by the same person are so near to each other, and so situated that the possession and control of each give an enhanced value to the whole of them, they are lands held together within the meaning of the Act; so that if one piece is taken compulsorily and converted to uses which depreciate the value of the rest, the owner has a right to compensation."

The damage must be caused by what is done on land actually taken.

VI. *In order to recover compensation, however, the damage must be caused by what is done upon the land actually taken.* This is shown in the case of *R.* v. *Mountford, Ex parte London United Tramways* (1901), *Ltd.*, L. R. (1906) 2 K. B. 814. The claimant's land was taken by the tramway company for the widening of the road, in order that the trams might run along the centre

of the road. The land actually taken was thrown into the pavement and used as a pavement. It was held that no compensation could be recovered owing to the claimant's business having been damaged by reason of a quiet road being turned into a noisy one on account of the running of the trams, as no part of the tram lines were actually placed on the land taken. The claimant was a dentist, which made it necessary that his premises should be as free from noise as possible.

Darling, J., said: "To my mind this matter presents itself thus, Mr. Mountford suffers by the taking away of his piece of land, and has had compensation therefor. He suffers further by reason of the public user of that piece of land as a portion of the street into which it has been thrown, and for that also he has admittedly received full compensation. He suffers, with every other dweller in Eden Street, from the running of trams along a public highway, but his house has been brought no nearer to the road than it was before his land was taken. Had the tramway been laid upon his land at all, he would have been entitled to the advantage he claims over his neighbours, and he would have gained it by something very like a fiction. There is no case yet decided which has carried so far the doctrine first laid down in the *Stockport Case*, as is here contended for, and I do not feel that justice requires an extension in itself partial and invidious."

Phillimore, J., in giving judgment, expressed considerable doubts upon the subject, and said that the principle upon which the cases proceeded was, that the owner, who had lost his veto by reason of compulsory power being given to the company, should be held to be entitled to such compensation in respect of the lands which he retained as he would reasonably have stipulated for if he had been a willing seller of the land which was to be taken. It might be said that he who could refuse to sell land, without the sale of which the company could not work their undertaking, had just as effective a veto as he who could

refuse to sell the land on which the undertaking was to be worked. But it seemed that this principle of veto had some limits. An owner of two farms not adjacent, but in the same parish, would, before he willingly parted with part of the lands on one farm, stipulate for compensation not only for injury to be done to the residue of that farm, but also for injury to be done to the other farm. The cases, however, had settled that where land was taken compulsorily, his compensation would be only in respect of the farm from which the severance was made. (*City of Glasgow Railway Co.* v. *Hunter*, L. R. 2 H. L. Sc. 78.) The right to compensation in these cases of severance being so exceptional, and, as many judges had said, anomalous, he thought they were right in confining it within somewhat narrow limits, and as the land in question was not taken by the tramway company to be used for the purpose of the undertaking, but was being acquired and paid for by the tramway company in order that it might be thrown into the road, he thought that the owner was not let in to claim compensation for injurious affection by reason of the working of the tramway on other parts of the road. He would, however, have applied the rule in the *Duke of Buccleuch's Case*, L. R. 5 H. L. 418, to land taken by a railway company for the purpose of forming embankments or slopes.

This case was followed by Bigham, J., in the case of *Horton* v. *Colwyn Bay and Colwyn District Council*, (1907) 1 K. B. 14, although, as Phillimore, J., pointed out in the *London and North Western Railway* v. *Reddaway*, 23 T. L. R. 279, it was a decision under the Public Health Act, 1875, and not the Lands Clauses Act, 1845, and further, the case of the *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418, was not brought to the notice of Bigham, J. The case of *Sisters of Charity of Rockingham and The King*, (1922) 2 A. C. 315, was an appeal from the Supreme Court of Canada. The principles laid down in *Cowper*

Essex v. *Acton Local Board* (1889), 14 A. C. 153, were followed, and the above case of *Horton* v. *Colwyn Bay*, which had been affirmed by the Court of Appeal ((1908) 1 K. B. 327), was cited with approval.

The appellants owned land in Nova Scotia immediately on the west of a railway and a public road, and had a school on such land. On the east side they owned two promontories of land on the margin of a public harbour. They had made on the promontories a bathing house and wharf, both of which they used in connection with the school, but no legal right across the railway was proved. The Crown took the two promontories under a Canadian Act for public purposes and made a large shunting yard upon that land and other land. It was held that the possession and control of the two promontories gave an enhanced value to the claimant's land on the west side of the railway, and that in respect of depreciation in value of those lands, due to the anticipated legal use of works which might be constructed upon the two promontories, the appellants were owners whose land had been injuriously affected, and that accordingly they were entitled to compensation. Further, that the Exchequer Court, before whom the question would come to determine the amount of compensation, should have regard to the anticipated use of the promontory as part of a shunting yard, not to the actual use at the time of the assessment. Lord Parmoor, in giving the judgment of the Judicial Committee of the Privy Council, said: "It may be that at the time when the compensation case is heard no works have been constructed, and in any case the appellants are entitled to claim compensation, which must be claimed once for all, for depreciation in the value of their lands on the west side of the railway, in so far as such depreciation is due to the anticipated legal user of authorised works which may be constructed upon the two promontories. The limitation of the amount of compensation to the anticipated construction of authorised works upon land actually taken from the

appellants has a special importance in a case like the present, where the shunting yard has been largely laid out on land which has not been taken from the appellants, and which has never been part of their property. This limitation, which is plainly expressed in all the leading English decisions, is again restated in *Horton* v. *Colwyn Bay Urban Council*, (1908) 1 K. B. 327, in which it was held that as the acts of user, the contemplation of which caused the depreciation, would be done on lands not the property of the claimant, the claimant was not entitled to any compensation."

In *London and North Western Railway* v. *Reddaway*, Phillimore, J., said: "No doubt the earliest authority upon this subject is a decision of Mr. Justice Compton in the case of *In re Stockport*, and no doubt in that case the mischief done to the land retained by the landowner arose from the use of the land which had been taken from him. But it seems to me fantastic to rely upon such a consideration. The two pieces of land are not living creatures fighting with each other, nor is it a case of the proverb, *suo sibi gladio hunc jugulo*. If claims for injurious affection were limited to cases where the mischief arose from the actual user of that part of the landowner's property which was taken away from him, the landowner would have to prove by measurement that the rails were actually laid upon his former land, and would get no compensation otherwise." The learned judge further said that he had reconsidered his judgment in the case of *Rex* v. *Mountford*. (See p. 91.) The decisions on the point referred to are somewhat conflicting, and it is submitted a final decision by the House of Lords would be welcomed.

VII. *It is customary to add a sum representing* 10 *per cent. to the actual value of the land taken, and the sheriff's jury would be directed to do this.* This sum is supposed to cover certain costs which would not be recoverable by a claimant under the award of costs by the tribunal.

CHAPTER IX.

PROCEDURE WHERE LAND IS COMPULSORILY ACQUIRED BY A GOVERNMENT DEPARTMENT OR A LOCAL OR PUBLIC AUTHORITY.

Acquisition of Land (Compulsory Purchase) Act, 1919—Tribunals—Official arbitrator, how appointed—Rules of Reference Committee, 1919, No. 1836/L. 30—Application for appointment of an official arbitrator to act—Powers of official arbitrators as to number of expert witnesses—Declaration by official arbitrator unnecessary—Appointment of new official arbitrator if one selected unable to act—Consolidation of claims—Power to order discovery—How far Arbitration Act, 1889, applies to arbitrations before official arbitrators—Particulars of claim necessary—Commissioners of Inland Revenue—Arbitrator agreed upon by the parties may assess compensation—Special case may be stated by official arbitrator, but findings of fact by arbitrator final—Procedure.

Acquisition of Land Act, 1919.

THE procedure to be followed in such cases is governed by the special provisions in the public or special Act authorising the compulsory acquisition, the Acquisition of Land (Compulsory Purchase) Act, 1919, and such sections of the Lands Clauses Act, 1845, and amending Acts, and the Arbitration Act, 1889, as are not inconsistent with the Acquisition of Land Act, 1919. This Act only applies to cases where the land is acquired compulsorily by a Government department or a local or public authority, and certain other cases where the official arbitrator appointed under some Act is specially mentioned as the tribunal to settle a dispute; for example, under the provisions of sect. 84 of the Law of Property Act, 1925, the official arbitrator has power to discharge or modify restrictive covenants affecting land under the

conditions referred to in the said section, and under the Town Planning Act, 1925, the official arbitrator can assess the compensation payable to a party whose land has been injuriously affected by the passing of a town planning scheme.

What matters dealt with by Acquisition of Land Act, 1919.

The Acquisition of Land Act, 1919, deals with the following matters:—

1. Tribunals for assessing compensation.
2. Rules for the assessing of compensation.
3. Procedure before an official arbitrator.
4. Provisions as to consolidating proceedings in the case of different interests in the same land.
5. Provisions as to costs.
6. Finality of award and statement of special cases.
7. Effect of the Act upon existing statutes.
8. Power to refer to Commissioners of Inland Revenue or to an agreed arbitrator.
9. Power of official arbitrators to give certificates of value.

Three tribunals.

There are three tribunals provided by the Acquisition of Land Act, 1919:—

I. An official arbitrator.
II. The Commissioners of Inland Revenue.
III. An arbitrator agreed upon between the parties.

I. Sect. 1 provides that where by or under any statute (whether passed before or after the passing of the Act) land is authorised to be acquired compulsorily by any Government department or any local or public authority, any question of disputed compensation, and, where any part of the land to be acquired is subject to a lease which comprises land not required, any question as to the apportionment of the rent payable under the lease, shall be referred to and determined by the arbitration of such one

Official arbitrator, how appointed.

of a panel of official arbitrators appointed under the Act as may be selected in accordance with the rules made by the reference committee under the Act.

The reference committee for England and Wales consists of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The persons appointed as official arbitrators must be persons having special knowledge in the valuation of land, and they cannot engage in private practice either alone or in partnership with any other person.

Rules of reference committee.

S. R. & O., 1919, No. 1836/L. 30.

Under the rules made by the reference committee dated 2nd December, 1919, and entitled "Statutory Rules and Orders, 1919, No. 1836/L. 30," where any question (Art. 1) as to disputed compensation or apportionment of rent (as explained in sect. 1 of the Act) has arisen, the acquiring authority or the claimant may, at any time after the expiration of fourteen days from the date on which the notice to treat was served, send to the reference committee an application for the selection of an arbitrator.

The acquiring authority or the claimant, as the case may be, must immediately after sending the application to the reference committee, send notice of the fact to the claimant or the acquiring authority, as the case may be, together with a copy of the application.

Form of notice in Schedule A to the rules as to application for appointment of an arbitrator.

A form of notice is set out in Schedule A. to the rules. The reference committee, on receiving a sealed application for the selection of an arbitrator, then proceed to select an arbitrator to deal with the case from the panel, and inform the two parties of the name and address of the person selected. The arbitrator thus selected then arranges with the parties the time and place of the hearing. There are two official arbitrators, namely, Mr. Hugh C. Webster and Mr. John Willmot. The reference committee sends to the arbitrator selected a copy of the application for the appointment of an arbitrator, and both parties must, at the request of the arbitrator, furnish him with any docu-

A separate panel has been established for Ireland.

ment or other information in their power to give, and which the arbitrator may require for the purpose of hearing the case.

Sect. 3 of the Acquisition of Land Act, 1919, provides that in any proceeding before the official arbitrator, not more than one expert witness on either side shall be heard unless the official arbitrator otherwise directs.

However, under the provisions of the Small Holdings and Allotments Acts, 1908 and 1926, the Minister of Agriculture and Fisheries decides whether counsel or expert witnesses shall be heard when compensation is assessed by the official arbitrator in respect of compulsory purchase of land, or when assessing rent or other compensation to be paid for hiring land under the Act.

Additional witnesses allowed in case of claim for mines or disturbance of business.

It is advisable to take out a preliminary appointment before the official arbitrator, in order that the question of the number of witnesses and of discovery may be decided by him. In any event it is provided that when the claim includes a claim for compensation in respect of minerals or the disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals, or, as the case may be, on the damage suffered by reason of the disturbance, may be allowed. Under this section the arbitrator not only deals with the value of the actual land taken, but also with any consequential damage caused by reason of such land being taken.

If a person whose land is not taken suffers injurious affection to his land by reason of the execution of the authorised works, it is submitted that any proceedings in respect of compensation must be brought under sect. 68 of the Lands Clauses Act, 1845. In the case of *Hewett* v. *Essex County Council,* 44 T. L. R. 373, the claimant made a claim for compensation for injurious affection to land, and took the view that the claim should be heard under sect. 68 of the Lands Clauses Act, 1845. The

council was of opinion that it should be heard before an official arbitrator under the Acquisition of Land Act, 1919. To avoid delay the claimant submitted to his jurisdiction. But the question still remains open as to whether the official arbitrator, in the absence of agreement between the parties, has jurisdiction in such cases. It is unnecessary for an official arbitrator to make any declaration before entering upon the arbitration, and this is one of the respects in which the proceedings differ from those under the Lands Clauses Act, 1845. He may inspect the land the subject-matter of the arbitration, the proceedings are in public, the fees charged in respect of proceedings before official arbitrators are such as the Treasury may prescribe, and two sets of rules have been made regulating the scale of fees, namely, Statutory Rules and Orders, 1920, Nos. 285 and 690, and dated 24th February, 1920, and 5th April, 1920, respectively.

Declaration by official arbitrator unnecessary.

Should the arbitrator die or become incapacitated, or if it is shown to the reference committee that it is expedient so to do in any other case, the committee may, at any time before the arbitrator has made his award, revoke the reference of the question to the selected arbitrator and select another arbitrator to act in the arbitration. In *Gross Sherwood and Heald, Ltd.* v. *Essex County Council*, (1927) 1 Ch. 205, the reference committee having appointed an arbitrator to act as official arbitrator in a case of disputed compensation for land compulsorily acquired, the said arbitrator fell ill after the sittings, and resigned his appointment on the panel of official arbitrators. In his letter of resignation he stated that he hoped to clear up the work in hand. Prior to his resignation being accepted his health improved, and he attended to the private business of his firm, but was unable to proceed with the arbitration. The committee appointed another official arbitrator to determine the question in dispute. It was held that the first arbitrator, having become disqualified under the provisions of the Act from

Appointment of new official arbitrator if one already selected cannot act.

acting as official arbitrator by engaging in private business before his term of office expired, and having resigned from the panel, the committee had full authority by the rules made under the Act to appoint a new arbitrator in his place.

Under sect. 4, if notices to treat have been served for the acquisition of several interests in the land to be acquired, and questions as to the amount of compensation have arisen in the case of any two or more of these interests, the acquiring authority may, either on making the application for the selection of an arbitrator to hear the claims or at any other time afterwards, make an application to the committee to have the same person selected as the arbitrator to hear all the claims to which the application relates. No such application can be made if an arbitrator has already entered upon the consideration of the claim.

Consolidation of claims.

When such an application is made, the reference committee selects the same person to act as arbitrator in respect of all the claims to which the application relates. A form of such an application is set out in the Schedule to the rules. When the same person has been thus selected the acquiring authority may at any time after he has been so selected, apply to him for an order that all claims shall be heard together.

Notice of intention to apply to the arbitrator for such an order must be sent to each claimant, and the notice must state the date on which, and the place at which, the arbitrator will hear any objections which may be made to the application.

If any claimant objects to have his claim heard together with the other claims, he must, within seven days after the receipt of the notice referred to, send notice of his objection to the acquiring authority and the arbitrator.

Objection to having claim heard with others.

The arbitrator, after taking into consideration any objections, makes such order as he thinks fit having regard to all the circumstances of the case.

The arbitrator, if he thinks fit, can make a consolidation order in respect of some only of the claims, and the order may in any case be made subject to such special directions as to costs, witnesses, method of procedure and otherwise as the arbitrator thinks proper.

Power of official arbitrator to order discovery.

As to discovery of documents, any powers conferred by the Arbitration Act, 1889, upon an arbitrator will be applicable to an official arbitrator, provided they are not inconsistent with the provisions of the 1919 Act or the special Act. In the First Schedule, para. (f), of the Arbitration Act, 1889, it is provided that the parties to the reference (*inter alia*) "shall do all other acts which during the proceedings on the reference the arbitrator or umpire may require," and in *Kursell* v. *Timber Operators and Contractors, Ltd.*, (1923) 2 K. B. 202, it was held that these words give the arbitrator power to make an order for discovery.

Arbitration Act, 1889, Schedule I. (f).

Acquisition of Land Act, 1919, s. 7.

It will be noticed that by sect. 7 of the Acquisition of Land Act, 1919, the provisions of the Act or order by which the land is authorised to be acquired, or of any Act incorporated therewith, shall in relation to the matters dealt with in this Act have effect subject to the Act, and so far as they are inconsistent with the Act, those provisions shall cease to have and shall not have effect.

How far Arbitration Act, 1889, applies to proceedings before official arbitrator.

Sect. 24 of the Arbitration Act, 1889, enacts that that Act applies to every arbitration under any Act, or if the arbitration was pursuant to a submission. In so far, therefore, as the provisions of the Arbitration Act, 1889, are not inconsistent with those of the Acquisition of Land Act, 1919, those provisions apply to an arbitration before an official arbitrator.

Full particulars of claim must be given.

In proceedings which come within the provisions of the Acquisition of Land Act, 1919, sect. 5 enacts it is necessary that, upon receipt of the notice to treat, the claimant should deliver to the acquiring authority a notice of claim. This must state the exact nature of the interest in respect of which compensation is claimed, distinguishing the

amount under separate heads, and showing how each head is calculated.

When such notice has been delivered the acquiring authority may, at any time within six weeks after delivery thereof, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land authorised to be acquired, but is liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn. If the amount of compensation is not agreed, the matter is determined by an official arbitrator.

Under sect. 6 of the Acquisition of Land Act, 1919, the decision of an official arbitrator is, upon any finding of fact, final and binding on the parties and the persons claiming under them respectively, but the official arbitrator may, and shall if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award in the form of a special case for the opinion of the High Court.

The section further enacts that the decision of the High Court upon any case so stated shall be final and conclusive, and shall not be subject to appeal to any other Court.

It should be noted that similar provisions as to the stating of a case are to be found in sects. 7 and 19 of the Arbitration Act, 1889, but under sect. 7 an appeal lies from the High Court as far as the House of Lords, but under sect. 19 there is no appeal from the decision of the Divisional Court. (*Re Knight and the Tabernacle Building Society*, (1892) 2 Q. B. 613.) Sects. 7 and 19, however, will not apply to cases within the Acquisition of Land Act, 1919, as the proviso in sect. 6 of that Act prohibits an appeal in all cases beyond the High Court.

An award stated in the form of a special case by an official arbitrator under sect. 6 of the Acquisition of Land

Act, 1919, although it is a matter of discretion, should be entered for hearing in the Crown paper of the Divisional Court of the King's Bench Division. In *Hewett* v. *Essex County Council*, 26 L. G. R. 48, Sankey, J., said: "In this case the Act says that the decision of the High Court shall be final, and it seems desirable in these important matters, as undoubtedly they are, that the party should have the advantage of three judges."

By reason of the repeals contained in the Housing Act, 1925, the proviso to sub-sect. (1) of sect. 7 of the Acquisition of Land Act, 1919, now reads as follows:—

> "Provided that nothing in this Act relating to the rules for assessing compensation shall affect any special provision as to the assessment of the value of land required under the Defence of the Realm (Acquisition of Land) Act, 1916, and contained in that Act or any Act amending that Act, if and so far as the provisions in those Acts are inconsistent with the rules under this Act."

The special provisions as to the assessment of compensation contained in the Defence of the Realm (Acquisition of Land) Act, 1916, will be found in the Schedule to that Act, and consist of a number of modifications of the provisions of the Lands Clauses Act, 1845, and certain principles applicable to the taking of land compulsorily.

As the Defence of the Realm (Acquisition of Land) Act, 1916, only deals with land acquired compulsorily just before or during the war, it to all intents is now no longer operative.

Commissioners of Inland Revenue.

II. The second tribunal appointed under the 1919 Act to measure the compensation consists of the Commissioners of Inland Revenue. Sect. 8 provides that if the parties so agree, any question as to disputed compensation or apportionment of rent may be referred to the Commissioners of Inland Revenue, or to an arbitrator agreed to between the parties.

If the matter is so referred to the commissioners, there is no arbitration, but the commissioners cause an assessment to be made in accordance with the rules for the assessment of compensation under the Act. Those rules will be found in sect. 2, and will be considered in Chapter X. There are certain special provisions which apply to a case submitted to the commissioners. The parties must comply with any direction or requirements as to furnishing of information, whether orally or in writing. They must also produce documents, if required to do so. Any officer of the commissioners appointed for the purpose is entitled to inspect any land which is the subject-matter of the reference to them. The commissioners must give either party the opportunity of being heard on the matter before an officer of the valuation office appointed for the purpose. When the assessment is made, it is to be published to the parties, and takes effect as if it were an award of an official arbitrator under the Act. Should either party refuse or neglect to comply with any direction or requirement of the commissioners, they may decline to proceed with the matter, and the question must be referred to an official arbitrator as if there had been no reference to the commissioners, and the arbitrator when awarding costs shall take into consideration any report of the commissioners as to the refusal or neglect which has rendered such reference to him necessary. The last provision referred to would probably be put into operation if a direction given by the commissioners with regard to discovery was not complied with.

Commissioners may be asked to assess value of the land, if either party desires.

The commissioners can be called upon to perform another duty under the Act. Under sect. 8 (4) either party may require the commissioners to assess the value of the land, and a copy of such assessment must be sent by the commissioners to the other party, and a certified copy of such assessment is admissible in evidence of that value in proceedings before the official arbitrator. Further, the officer who made the assessment must attend the hearing

if required to do so by the official arbitrator to answer any question put to him by that official. The assessment of the commissioners is by no means conclusive, but is merely for the guidance and assistance of the official arbitrator in coming to a decision. An example of a case in which this course was adopted will be found in Chapter XXII.

Such assessment only for guidance of official arbitrator.

III. The third tribunal provided under the Act is an arbitrator agreed upon between the parties. Sect. 8 (1). If such an arbitrator be agreed upon, the provisions of the Act apply with the exception of sect. 1, which deals with the appointment of official arbitrators, sect. 4, which provides for the consolidation of proceedings where compensation is claimed in respect of various interests in the same land, and so much of sect. 3 as requires the proceedings to be heard in public, and provides for the fixing of fees.

Arbitrator agreed upon between the parties.

Acquisition of Land Act, 1919, s. 8 (1).

An arbitrator, therefore, appointed between the parties will be entitled to an agreed fee, or in default of agreement to a reasonable fee for his services, and such fees should be stated in the award. The party to take up the award will be the acquiring authority (Lands Clauses Act, 1845, s. 35), and the arbitrator's fees must be paid by the acquiring authority in the first instance. If the acquiring authority be found to be entitled to costs under the provision of the Act, having regard to the amount awarded, the same can be recovered from the claimant.

The acquiring authority to take up award.

Lands Clauses Act, 1845, s. 35.

Further, with regard to the duties of either an official arbitrator or an arbitrator agreed upon by the parties, but appointed under the Act, it is unnecessary for either to make any declaration before entry into consideration of any matter referred to him. Either is entitled to enter on and inspect any land the subject-matter of the proceedings, and he must on the application of either party specify the amount awarded in respect of any particular matter.

Under sect. 9 of the Acquisition of Land Act, 1919, an official arbitrator may, on the application of any person, certify the value of land being sold by him to a Government department or public or local authority, and the sale of the land to the department or authority at the price so certified shall be deemed to be a sale at the best price that can reasonably be obtained. Acquisition of Land Act, 1919, s. 9.

This section appears to be applicable to cases where land is being sold by agreement to a Government department or a local or public authority, and can be made use of by a person selling at the best price by order of the Court, or as a trustee or executor.

The definition clause, sect. 12 (2), should be noted:— Acquisition of Land Act, 1919, s. 12 (2).

"Land" includes water and any interests in land or water, and any easement or right in, to or over land or water. "Land."

"Public authority" means any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock or other public undertaking. The definition of "public authority" was the subject of judicial interpretation in the case of *Metropolitan Water Board* v. *Berton*, (1921) 1 Ch. 299, already referred to in Chapter II. "Public authority."

The question of costs in proceedings under the Acquisition of Land Act, 1919, is dealt with in Chapter XIII., and the consideration of rules as to compensation referred to in sect. 2 of that Act will be found in the next Chapter.

CHAPTER X.

PRINCIPLES OF ASSESSMENT OF COMPENSATION WHERE LAND IS COMPULSORILY ACQUIRED BY A GOVERNMENT DEPARTMENT OR A LOCAL OR PUBLIC AUTHORITY.

The Acquisition of Land (Compulsory Purchase) Act, 1919.

Acquisition of Land Act, 1919, s. 2—Rules as to assessment of compensation—No extra allowance owing to purchase being compulsory—Value in open market—Returns for taxation purposes may be considered—Special suitability not to be considered if statutory powers necessary—Or no market other than a particular purchaser—*Bonâ fide* offer of purchase prior to passing of Act may be considered—Increase in value of land owing to user contrary to law or detrimental to health of inmates not to be considered—Reinstatement—Compensation for disturbance.

In 1917 a Parliamentary Committee was appointed, presided over by Mr. (now Sir) Leslie Scott, K.C., M.P., with a view to enquiry as to what alterations could be usefully made in the procedure under which land is acquired compulsorily, and also with a view to cheapening the purchase of such land, particularly in cases where land has to be acquired compulsorily by public bodies such as Government departments or local or public authorities. Little has been done by Parliament as a result of that enquiry, but one Act of Parliament is found in the Statute Book as a result, namely, the Acquisition of Land (Compulsory Purchase) Act, 1919. The provisions governing procedure under that Act have already been considered in Chapter IX.

As to the principles of compensation applicable where land is taken by a Government department or a local or public authority, it is laid down by sect. 2 of the Act that an official arbitrator shall act in accordance with the rules contained in the said section.

Rules as to assessment of compensation in sect. 2 of Acquisition of Land Act, 1919.

These rules apply to all cases where land is compulsorily acquired by a Government department or a local or public authority, with the exception of cases coming within the provision of the Defence of the Realm (Acqusition of Land) Act, 1916, which statute contains certain special provisions as to compensation. Although the general provisions of the Lands Clauses Act, 1845, and the Arbitration Act, 1889, apply to cases where land is compulsorily acquired by a Government department or a local or public authority, any rules as to compensation contained in the Lands Clauses Act, 1845, and decisions thereon, and any provisions as to arbitration procedure contained in the Arbitration Act, 1889, inconsistent with the provisions of the Acquisition of Land Act, 1919, do not apply to these cases.

The rules formulated in sect. 2 of the Acquisition of Land Act, 1919, are as follows:—

1. No allowance on account of compulsory purchase.

1. *No allowance shall be made on account of the acquisition being compulsory.*

Prior to the passing of this Act, with one or two exceptions, a sum of 10 per cent. in England was always added to the value of the land taken compulsorily, and it was usual for a jury to be directed by the undersheriff to include the 10 per cent. in the figures found by them in respect of the value of the land.

The explanation of this extra allowance, which obviously gave to the owner more than he lost by the compulsory acquisition, is, that it covered certain expenses the owner had incurred which he could not recover by way of the item of taxed costs, which might be allowed him by reason of the verdict or award. It is still allowed as

a proper heading of compensation where land is acquired compulsorily by a private undertaking for profit, such as a railway company. Prior to the passing of this Act, certain public Acts such as the Housing of the Working Class Act, 1890, now repealed by the Housing Act, 1925, and the Small Holdings and Allotments Act, 1908, had prohibited this allowance being made.

Value of land in the open market.

2. *The value of land is, subject as thereinafter provided in the Act, to be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realise; provided always that the arbitrator shall be entitled to consider all returns and assessment of capital value for taxation made or acquiesced in by the claimant.*

A seller who was not willing might put a fanciful value on his land, and therefore the official arbitrator must assume that the seller is not being pressed to sell, but that he is willing to sell at a proper market price.

It may be said: must there be a willing buyer?

The question as to whether the words "a willing buyer" should be introduced into the rule was considered in Parliament when the Bill was being discussed, and it was said that the words "a willing seller" taken together with "an open market" connoted a "willing buyer," otherwise a prospective buyer would not bid.

Returns for taxation papers to be considered by arbitrator.

The proviso to this rule allows a new class of evidence to be placed before the arbitrators, namely, returns and assessments of capital value for taxation made or acquiesced in by the claimant. Such evidence would be figures returned by the claimant for the purposes of the Finance Act. If a claimant returns a certain figure as the value for the purposes of being taxed upon that figure, and it is a lower one than he places before the arbitrator, his own figure made for taxation purposes may be considered by the arbitrator as more likely to be correct than a figure put forward when his object is to secure as much as possible for his land.

This proviso was probably inserted in order that evidence might have been given of valuations of land made under the Finance (1909-10) Act, 1910, but these sections have been repealed by the Finance Act, 1921.

3. *The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department or any local or public authority; provided that any* bonâ fide *offer for the purchase of the land made before the passing of the Act which may be brought to the notice of the arbitrator may be taken into consideration.*

Special suitability not to be considered if statutory powers necessary.

Or no market apart from a particular purchaser.

Bonâ fide offer for purchase prior to passing of Act may be considered by arbitrator.

This rule is intended to make an exception in cases coming within the Acquisition of Land Act, 1919, to the rule to be found in *Re Lucas and Chesterfield Gas and Water Board*, (1909) 1 K. B. 16.

In that case it was laid down that where land is compulsorily taken for the purpose of making a reservoir, and the land has a special adaptability for the construction of a reservoir, the tribunal assessing the compensation is not precluded from taking into consideration the special adaptability as an element of value, by reason of the fact that the land could not be utilised for the construction of a reservoir by other possible competitors unless statutory powers for its compulsory purchase were first obtained.

It was further held that in determining the value of the land arising from such special adaptability, the tribunal should have regard to the contingent value arising from the possibility of the land coming into the market when required for a particular purpose, and not to the value of the realised possibility from the fact of the promoters having obtained statutory powers for the construction of the reservoir.

Under this rule in sect. 2, therefore, if the special use to which land could be put is one for which parliamentary powers must be obtained, that use cannot be taken into consideration by the arbitrator.

As to the purpose being one for which there is no market apart from the special needs of a particular purchaser, this rule is intended to make the principles laid down in the case of *Inland Revenue Commissioners* v. *Clay,* and *Inland Revenue Commissioners* v. *Buchanan,* (1914) 3 K. B. 466, inapplicable to cases under the Acquisition of Land Act, 1919. This case is known as "*The Plymouth Case.*" In that case certain land adjoined a nursing home, and was of special value to the home for extension purposes, and was bought at a value higher than the market value owing to its special suitability for the purposes of extending the nursing home. It was therefore assessed, for the purposes of the Finance (1909-10) Act, 1910, at £1,000, this figure being above its value in the open market. It was held to be a correct assessment.

Under the powers of the Acquisition of Land Act, 1919, therefore, the special value of the land for the purpose of an extension of the nursing home would not be considered by the Act, but only the figure it would be likely to fetch in the open market, assuming that there was no bidder present requiring the land for a special purpose.

Arbitrator not to take into consideration possibility of land being used by Government department or local or public authority.

Again, a claimant cannot ask the arbitrator to take into consideration a possibility of the land being used by any Government department or any local or public authority, and it follows that the use to which the property is going to be put by the acquiring authority is not to be considered when giving the compensation. It may be that the land is derelict land, which could only be used as a sewage farm or for other public purposes by a public or local authority. The land can only be valued as derelict land, or in some cases as agricultural land, and the fact that it might be used for public works cannot be taken into consideration.

As to the proviso to rule 3, namely, "Any *bonâ fide* offer for the purchase of the land made before the passing of the Act which may be brought to the notice of the arbitrator shall be taken into consideration."

The object of this proviso is to ensure that the claimant shall have the opportunity of placing before the arbitrator a figure which another possible purchaser considered as the value of the land. It will be seen that the *bonâ fide* offer which may be given in evidence is one made *before* the passing of the Act, namely, 19th August, 1919. Owing to the different values which prevail to-day as compared with those which existed in 1919, an offer made prior to 1919 will probably not have much weight with an arbitrator. There has been one case upon the wording of the proviso, namely, *Percival* v. *Peterborough Corporation*, (1921) 1 K. B. 414. In that case, as a result of negotiations, the corporation made an offer to the claimant prior to the passing of the Act. The said offer was held to be admissible in evidence at the arbitration under the Acquisition of Land Act, 1919, although the agreement resulting from the offer was conditional upon confirmation of the agreement by the Local Government Board. The latter body did not in fact complete the agreement.

The Earl of Reading, C. J., said: "The words of the Act are sufficiently wide to make it incumbent upon the arbitrator to admit the evidence of the earlier offer. In the present case I think that the arbitrator was bound to take the offer into consideration. As I have already indicated, the arbitrator is not bound to give effect to the evidence of the offer. The proviso does not require him to act upon the offer, but only to take it into consideration. It is, I suppose, some evidence of what was then thought to be the value of the land. The question of the weight of the evidence is a question of fact for the arbitrator, with which we have no concern. The only question for the Court is the question of law as to the

admissibility of the evidence." Avory, J., said: "While sect. 2, sub-sect. (3) of the Act provides that the arbitrator is not to take into account the special suitability or adaptability of the land for the purposes only of the local or public authority, I am satisfied by the argument to which we have listened that the meaning of the proviso in question, specially inserted as it is in that sub-section, is that he is to take into consideration the fact that an offer has been made by the local authority for the purchase of the land before the passing of the Act."

If value of land is increased by a user contrary to law or one detrimental to health, such increase is not to be taken into consideration.

4. *Where the value of the land is increased by reason of the use thereof, or of any premises thereon, in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.*

The object of this rule is to remove from the consideration of the arbitrator any increased value owing to the premises being used for purposes not permitted by law. For example, the premises might be used for the purpose of business, whereas the covenants in the lease limited its user to private purposes only. In such case the Court could grant an injunction restraining such user. Again, the premises might be used as a brothel, and a larger rental might be paid to the landlord by reason of such user. Compensation based on such increased rental might possibly be claimed by the person or persons interested in the premises, but the above rule would render such claim unarguable. The latter part of this rule would apply to a case where premises are acquired compulsorily, and it is shown to the arbitrator that the rental of the premises was enhanced by reason of the premises being used for the accommodation of a large number of persons, in fact, the number causing such overcrowding as to be detrimental to the health of the inmates. A somewhat similar rule

is to be found in the Housing Act, 1925, Sched. I., Part II. (1). It is submitted that the compensation to be awarded should be, as stated in that Act, based on the rental which would have been obtainable if the premises were occupied only by the number of persons which the premises were, under all the circumstances of the case, fitted to accommodate without such overcrowding as is injurious to the health of the inmates. Housing Act, 1925, Schedule I., Part II. (1).

The latter part of the rule may also be intended to cover a case where the land or the premises are used for the purposes of a noxious trade giving off fumes injurious to the public health of the neighbourhood.

5. *Where the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is* bonâ fide *intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.* Reinstatement provided for.

By reinstatement is meant the cost of placing the claimant in the same position, or in an equally advantageous position, to that he occupied when he was dispossessed by the acquiring authority. Assume a building specially adapted as a soap factory. There may be no market for a soap factory. If there is no market the arbitrator has no basis upon which to assess the compensation, and the official arbitrator may, under those circumstances, assess the compensation on the basis of equivalent reinstatement, provided that he is satisfied that the claimant *bonâ fide* intends to reinstate himself with his business elsewhere.

Reinstatement prior to the passing of the Act was generally applied to cases where churches, school buildings, or business premises have been acquired. It has not hitherto been applied to factories, but provided

it can be shown that there is no market at all for the land for the purpose for which it has hitherto been used, there appears to be no reason why the arbitrator should not make a wider use of the rule than would have been done prior to the passing of the Act.

The rule as to "market value" not to apply to claim for disturbance or other matter not based on value of land.

6. *The provisions of rule 2 shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.*

The claims contemplated by this rule are those of loss of a business being carried on on the land compulsorily acquired, and also compensation for severance, which is allowed by sect. 63 of the Lands Clauses Act, 1845. If land be taken, and the owner's adjoining land is injuriously affected, it has been shown by the decisions cited in Chapter VIII. that compensation can be recovered.

No judicial decision has been given as to whether a claim in respect of injurious affection of land owned by one, none of whose land has been taken, can be brought before an official arbitrator under the provisions of the Acquisition of Land Act, 1919, but under certain Acts questions as to injurious affection of land are specifically referred to official arbitrators. For example, under sect. 10 (4) of the Town Planning Act, 1925, any question as to whether any property is injuriously affected or increased in value by the making of a town planning scheme is to be determined by an official arbitrator, unless the parties agree to some other method of determination.

Statutory Rules and Orders, 1926, No. 439/L. 9, Town Planning, England, referring to the rules made under the Acquisition of Land Act, 1919, dated 2nd December, 1919, extend the definition of "question" in those rules to any question which by virtue of sect. 10 of the Town Planning Act, 1925, is to be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (in the rules

referred to as "a question relating to compensation under a town planning scheme").

The general effect of these rules is to make the Acquisition of Land Act Rules applicable to cases under the Town Planning Act, 1925, with the exception of certain paragraphs set out in the Town Planning Rules.

CHAPTER XI.

PRINCIPLES OF ASSESSMENT OF COMPENSATION WHERE NO LAND IS TAKEN, BUT LAND IS INJURIOUSLY AFFECTED.

Lands Clauses Act, 1845, s. 68—Tribunal arbitration or jury—Right to compensation assignable—Principles of compensation—Loss result of act made legal by statutory powers—Damage must be actionable but for statutory powers—Loss must be connected with the land and not merely personal—Loss must arise from execution of the work and not the user—Loss of trade by a work not affecting the land not recoverable—Loss owing to obstruction to access to premises recoverable—*Hewett* v. *Essex County Council*—Special provisions in statutes as to compensation for user.

Land not taken but injuriously affected by execution of works.

Lands Clauses Act, 1845, s. 68.

If a person's land is not taken but injuriously affected by the execution of the authorised works upon land actually taken and entered upon for some statutory purpose, the case comes within the provisions of sect. 68 of the Lands Clauses Act, 1845, if the sum claimed exceed £50.

If the sum claimed be £50 or less, the compensation is determined by two justices in the same manner as it would have been if there had been no entry by the promoters, namely, under sects. 22—24.

The material words of sect. 68 for this purpose are as follows:—

> "If a party shall be entitled to any compensation in respect of any land or of any interest therein which shall have been injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this Act or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of £50, such

party shall have the same settled either by arbitration or by the verdict of a jury."

Claimant can request arbitration.

The section also states that the claimant can give notice in writing to the promoters of his desire to have the matter settled by arbitration, and that he must state in such notice his interest in the land in respect of which he claims compensation, and also the amount of compensation claimed.

Otherwise, sheriff's jury.

The section further deals with the subsequent procedure as to the summoning of a jury or the appointment of arbitrators.

The principles applicable to the assessment of compensation in cases where no land is taken from the claimant differs from those applicable to cases where land has been taken from him. Compensation for injurious affection must be assessed once and for all, and will include compensation for all damage which may be reasonably anticipated at the time of the enquiry. (*Croft v. London and North Western Railway*, 32 L. J. Q. B. 113. The claimant should give notice that damage is resulting to his premises from the execution of the works if he is going to complain of structural damage as soon as cracks appear, and also inform the promoters that a claim will be made when the execution of the works is completed. It may also be well to cover the cracks with strips of paper in order to show if the damage, caused probably by settlement, is continuing.

Right to compensation for damage caused by proper exercise of statutory powers.

The right to recover compensation for injurious affection when no land is taken from the claimant, is not a right to damages for a wrongful act, but a right to compensation for damage which is done through the promoters properly exercising their statutory powers, and it is a right which can be assigned. (*Dawson* v. *Great Northern and City Railway*, (1905) 1 K. B. 260.)

If, however, the promoters exceed their statutory powers, any damage arising from such acts can be made the subject of an action at common law.

The principles applicable are as follows:—

Loss must result from Act made legal by statutory powers.

The damage or loss must be the result of an act made legal by the statutory powers of the promoters. Provided, therefore, an act, which the promoters are allowed to do by their statute, is done in a proper manner, though the act done causes special injury to a particular person, no action can be maintained, but that person must seek compensation under the Lands Clauses Acts. (*Imperial Gas Light and Coke Co.* v. *Broadbent,* 7 H. L. C. 600.)

Powers must be exercised reasonably.

Again, although a company may be exercising statutory powers, if those powers are exercised unreasonably as, for example, working at night when such work could be carried out during the day, the right of action remains to an aggrieved individual. (*Roberts* v. *Charing Cross, Euston and Hampstead Railway Co.* (1903), 87 L. T. 732.) In *Biscoe* v. *Great Eastern Railway Co.*, L. R. 16 Eq. 636, a railway company in executing works, authorised by their statutory powers, took insufficient precautions to secure the safety of an adjoining house. The Court granted an injunction to restrain the negligent exercise of their powers, and granted an enquiry as to damages, the railway company contending that the plaintiff's remedy was under sect. 68 of the Lands Clauses Act, 1845. Sir John Wickens, V.-C., in giving judgment, said: "A railway company in constructing its works on its own land may lawfully do acts which no private proprietor could have done. No doubt the railway company is bound in many cases to make compensation to the adjoining owners. But whereas the right to compensation can only arise where an individual in the place of the company would have been liable for damages, there are many cases in which, although there would be a right to damages against an individual, there is no right to compensation against a railway company. I mean, of course, compensation under the 68th section of the Lands Clauses Act. Of course, the act of the railway company being lawful, subject to the payment of compensation which is not pay-

Injunction may restrain negligent exercise of powers.

able until the act is completed, they cannot be restrained by injunction. But a railway company having these wide powers in derogation of individual rights is bound to exercise them with moderation and discretion. . . . The powers are to be exercised with a reasonable regard to the rights of other persons. It is to the interest of the public that no private rights should stand in the way of the execution of the works; but where the company can construct its works without injury to private rights, it is in general bound to do so."

Damage must have been actionable but for statutory powers.

The damage or loss must be such as would have been actionable but for statutory powers.

In *Glover* v. *North Staffordshire Railway Co.*, 20 L. J. Q. B. 379, Lord Campbell said: "The property is depreciated in value by the company doing that which would be actionable unless they were protected by the powers of their Act. I agree that this affords a very fair criterion of their right to receive compensation.

In *Ricket* v. *The Metropolitan Railway Co.*, L. R. 2 H. L. 175, the claimant was the occupier of a public-house situated by the side of a public footpath. The railway company obtained power under certain Acts of Parliament, incorporating the Lands Clauses Act, 1845, and the Railway Clauses Act, 1845, to make a railway. The company in carrying their powers into execution, obstructed streets leading to the footpath so as to make access to the public-house inconvenient. The obstructions were not permanent, and later the streets were restored to their original condition. The jury found that there was no structural damage to the premises, but that the claimant had sustained damage in respect of the interruption to his business. It was held that the claimant was not entitled under sect. 68 of the Lands Clauses Act, 1845, or sections of the Railway Clauses Act, 1845, to receive compensation for injury to his trade consequent upon these obstructions. Lord Chelmsford, L. C., said at p. 196, that upon

a review of all the authorities, and upon a consideration of the sections of the statutes relating to the subject he had satisfied himself that the temporary obstruction of the highway which prevented the free passage of persons along it and so incidentally interrupted the resort to the plaintiff's public-house would not have been the subject of an action at common law, as an individual injury sustained by the plaintiff distinguishing his case from that of the rest of the public. That, therefore, he altogether failed to bring himself within the general principles upon which a claim to compensation under the Act in question had been declared to depend.

The case of *Ricket* v. *Metropolitan Railway* has been referred to in a great many cases in compensation and kindred matters, for example, in *Penny* v. *S. E. Railway Co.* (1857), 26 L. J. Q. B. 225; *Caledonian Railway* v. *Walker's Trustees,* L. R. 7 A. C. 259; *Metropolitan Board of Works* v. *McCarthy,* L. R. 7 H. L. 243; and *Anglo-Algerian Steamship Co.* v. *Houlder*, (1908) 1 K. B. 659.

In the case of the *Caledonian Railway Co.* v. *Walker's Trustees,* Lord Selborne, L. C., said that the three decisions of the House of Lords, *Caledonian Railway Co.* v. *Ogilvy,* 2 Macqueen, 229, *Ricket* v. *Metropolitan Railway Co.*, and *Metropolitan Board of Works* v. *McCarthy* appeared to him to be capable of being explained and justified upon consistent principles which he considered established by them and the judgment in the case of *Hammersmith* v. *Brand,* L. R. 4 H. L. 171, those principles being—

Principles stated in *Caledonian Railway Co.* v. *Walker's Trustees,* L. R. 7 A. C. 276.

(a) When a right of action which would have existed if the work in respect of which compensation is claimed had not been authorised by Parliament would have been merely personal, without reference to land or its incidents, compensation is not due under the Acts.

(b) When damage arises not out of the execution, but

only out of the subsequent use of the work, there was no case for compensation.

(c) Loss of trade or custom by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right properly incident thereto, is not by itself a proper subject for compensation.

Loss of trade by reason of a work not directly affecting the land not a ground for compensation.

(d) Obstruction by the execution of the work of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation.

As to there being no right of compensation for a mere personal injury, the case of *Reg.* v. *Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358, may be cited, in which it was held that an occupier of premises near the Thames who had been accustomed to draw water from the river and to bring barges to a draw dock as public rights, and not as rights attached to the premises, and was obstructed in the enjoyment of the rights by the works of the embankment, was not entitled to compensation under sect. 68.

No compensation for mere personal injury.

A recent case upon the subject is *Hewett and Others* v. *Essex County Council*, 44 T. L. R. 373, the facts being as follows:—The Essex County Council was authorised by statute to construct a bridge over a navigable river, namely, the River Thames, giving access to a wharf used by sea-going vessels and also for storage. The bridge was built and interfered with access to the wharf, so that goods had to be transhipped into barges, and the owners of the wharf were compelled to purchase a new wharf in order to continue to carry on their business.

Claims for compensation were made by the freeholders, a mortgagee and the occupiers, who were tenants at will of the old wharf. Although no land was taken from the claimants, the parties agreed to arbitration before an official referee under the Acquisition of Land Act, 1919.

The official arbitrator made his award in the form of a special case under sect. 6 of the Acquisition of Land Act, 1919.

A claim for depreciation of the freehold value of the old wharf was allowed by the Divisional Court, the following heads of claim being disallowed:—Cost of new wharf, damage sustained through loss of traffic at the old wharf, damage sustained by reason of extra cost of handling such portion of their traffic as they were unable to deal with at the new wharf, damage sustained to river sailing barge traffic, damage sustained by total stoppage of dumb barge with goods for overseas, and damage for loss of storage rent. It will be seen, therefore, that all claims, apart from one connected actually with the old wharf building itself, were rejected. The case of *Metropolitan Board of Works* v. *Howard*, 5 T. L. R. 732, was cited during the argument.

Compensation for interfering with right of access.

The following are examples of cases where compensation has been allowed, where no land of the claimant has been taken, for blocking up one of the means of access to a building:—*Metropolitan Board of Works* v. *McCarthy*, L. R. 7 H. L. C. 243 (making means of access to a building inconvenient); *Beckett* v. *Midland Railway Co.*, L. R. 3 C. P. 82 (the closing of a highway and substituting a new highway); *Metropolitan Board of Works* v. *Howard*, 5 T. L. R. 732.

The promoters may, without paying compensation, interfere with the access of light so long as no prescriptive right to light is interfered with. (*Bute* v. *Imperial Gas Co., Ltd.*, 2 Ch. App. 158; *Eagle* v. *Charing Cross Railway* (1867), L. R. 2 C. P. 638.) They may also demolish houses, although such demolition injures the business of the neighbouring shops (*R.* v. *Vaughan*, L. R. 4 Q. B. 190), and may build a bridge and injure a right to ferry. (*Hopkins* v. *G. N. Railway Co.*, 2 Q. B. D. 224.)

For further examples, reference may be made to a useful

collection of cases in Halsbury's Laws of England. (Compulsory purchase in Vol. 6, at pp. 45 and 46.)

As to compensation not being allowed for damage arising out of the subsequent user of the work, but only out of the erection or construction of the works, the case of *Hammersmith Railway Co.* v. *Brand*, L. R. 4 H. L. 171, may be cited. In this case compensation was claimed for damage or annoyance arising from vibration (without negligence) caused by the passing of trains after the railway had been brought into use. The sheriff's jury found for a sum "for vibration from the use of the railway after construction." It was held that such compensation was not recoverable.

A.-G. v. *Metropolitan Railway Co.*, (1894) 1 Q. B. 384, is another case on the same point. The defendants under their Acts constructed part of the railway in a tunnel, and having purchased a piece of ground at the back of a dwelling-house, carried the tunnel through such ground and made an aperture in the ground for the purpose of ventilating the tunnel. Later on, during the tenancy of the plaintiff, the defendants, with a view to the better ventilation of their tunnel, enlarged the aperture, the result being that the quantity of smoke and foul air coming from the tunnel to the plaintiff's house increased, and the house was materially depreciated in value. In declining to give compensation, Davey, L. J., said: "It is plain that the construction of the work would not have injured the plaintiff if the railway were not used, and it is the user of the railway with this opening in the tunnel, and not the construction of the opening and walls, of which the plaintiff complains. On this point, therefore, I am of opinion that the case is covered by *Brand's Case*.

Special provisions allowing compensation for damage due to user.

Some statutes provide for compensation being given for damage to land owing to the user, in addition to that caused by the execution of the authorised works. For example, every private Act passed since 1902 authorising

the construction of underground electric railways contains the following special clause:—

> "In addition to the provisions of the Act incorporated herewith with respect to compensation for lands taken or injuriously affected, the company shall make compensation to the owner, lessee, and occupiers of any land, house, or building which shall be injuriously affected by reason of the working of the railway when constructed in tunnel (including the working of lifts and any other works in connection with the said railway), notwithstanding that no part of the property of such owner, lessee, or occupier is taken by the company. Provided that all claims for compensation under this section shall be made within two years from the date of the opening of the railway for public traffic, and shall be settled by a single arbitrator under and subject to the provisions of the Arbitration Act, 1889, save that when the parties do not concur in the appointment of an arbitrator, the Board of Trade shall have the power of the Court or a judge under sect. 5 of the said Act."

CHAPTER XII.

SPECIAL PROVISIONS WHERE LAND IS COMPULSORILY ACQUIRED BY A RAILWAY COMPANY.

Railways Clauses Consolidation Act, 1845—Mines and minerals—Mines (Working Facilities and Support) Act, 1923, ss. 15 and 16—Railways Clauses Act, 1863—Railways Companies Act, 1867—Board of Trade to appoint surveyor to assess compensation—Regulation of Railways Act, 1868—Compensation may be determined by High Court judge—Ministry of Transport Act, 1919, and Railway Act, 1921—Light Railways Acts, 1896 and 1912—Development and Road Improvement Funds Act, 1909—Schedule—Betterment.

THE Lands Clauses Act, 1845, is applicable to cases where land is acquired compulsorily by railway companies, but the provisions of the Railways Clauses Consolidation Act, 1845 (hereafter called the Railways Clauses Act, 1845), must also be taken into consideration.

Railways Clauses Consolidation Act, 1845.

This Act applies to every railway which by any special Act is authorised to be constructed, and is incorporated in such special Act, and all the clauses and provisions of the Railways Clauses Act, 1845, apply to the undertaking authorised by the special Act, save so far as such clauses and provisions are expressly varied or excepted by the special Act.

Sect. 6 of the Railways Clauses Act, 1845, enacts that the companies shall make to the owners and occupiers of, and all other parties interested in, any such land taken or used for the purposes of the railway, or injuriously

Railways Clauses Act, 1845, s. 6.

Compensation for land taken

and for injurious affection by construction.

affected by the construction thereof, full compensation for the value of the land so taken or used, and for all damage sustained by such owners, occupiers and other parties, by reason of the exercise, as regards such land, of the powers of the Railway Clauses Act, 1845, the special Act or any Act incorporated therewith, vested in the companies, and that except where otherwise provided by the Railways Clauses Act, 1845, or the special Act, the amount of such compensation is to be determined in the manner provided by the Lands Clauses Act, 1845, and all the provisions of the latter Act are applicable to determine the amount of the compensation and enforce payment or other satisfaction therefor.

The compensation allowed under this section is the same as that allowed under sects. 49, 63 and 68 of the Lands Clauses Act, 1845, although not expressed in exactly the same terms, and the principles with regard to the compensation assessed under the Lands Clauses Act, 1845, apply to the compensation provided for under the Railways Clauses Act, 1845. (*Knock* v. *Metropolitan Railway Co.*, L. R. 4 C. P. 131.)

Certain deviations allowed.

Other sections in the Railways Clauses Act, 1845, deal with the amount of deviation allowed from the datum line approved by Parliament, permitting the railway for the purpose of constructing the line and accommodation works, to make inclined planes, alter the course of rivers, make drains and to do all other acts necessary for making, maintaining, altering or repairing and using the railway, provided always that in the exercise of the powers granted, the company are under an obligation to do as little damage as may be, and to make full satisfaction for all damage sustained by any party interested by reason of the exercise of such powers.

Alterations in rivers, drains, &c., allowed for purpose of construction of line and accommodation works.

Full satisfaction to be given for damage done.

Railways Clauses Act, 1845, s. 32.

Sect. 32 of the Railways Clauses Act, 1845, gives power to a railway company to take temporary possession of land for certain purposes without previous payment of

price. This power, however, is to be exercised under the restrictions contained in the section and after certain formalities have been complied with.

Power of railways to take temporary possession of land.

By sect. 42 in all cases where the company so enter temporarily upon land for the purpose of making spoil banks, or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, the owners or occupiers of the land, before having accepted compensation for temporary occupation allowed them by sect. 43 of the Act, may serve a notice in writing upon the railway company requiring them to purchase the land so temporarily occupied, and the company are then bound to purchase such lands.

Railways Clauses Act, 1845, s. 42.

Under sects. 68 to 74, the railway company may make and maintain certain works for the accommodation of the owners of lands adjoining the railway, such as gates, hedges, fences, drains, and if any difference arises as to the accommodation works the same is to be settled by two justices. (See *Hood* v. *North-Eastern Railway* (1870), L. R. 11 Eq. 116.)

Railways Clauses Act, 1845, ss. 77-85.

Mines and minerals.

Sects. 78 to 85 of the Railways Clauses Act, 1845, deal with mines under or near railways. Those sections do not apply to railways authorised to be constructed since 1st January, 1924, because under sect. 15 of the Mines (Working Facilities and Support) Act, 1923, other provisions have been substituted for those sections. Subject, however, to the provisions of sect. 16 of the 1923 Act, the original sects. 78 to 85 apply to railway companies which existed prior to January, 1924. The unrepealed sect. 78 is specifically referred to in sect. 16 of the 1923 Act, and is therefore set out in full hereunder:—

> "If the owner, lessee or occupier of any mines or minerals lying under the railway, or any works connected therewith, or within the prescribed distance,

or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice, it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines, or any part thereof, to such owner, lessee or occupier thereof, then he shall not work or get the same; and if the company and such owner, lessee or occupier do not agree as to the amount of compensation, the same shall be settled as in other cases of disputed compensation."

Sect. 16 of the Mines (Working Facilities and Support) Act, 1923, enacts that the substituted sections set out in sect. 15 apply to then existing railways if the special Railway Act incorporates sects. 78—85 of the 1845 Railway Act, and does not prescribe any distance in lieu of the distance of forty yards mentioned in sect. 78 of the 1845 Railway Act.

Sects. 15 and 16 of the Mines (Working Facilities and Support) Act, 1923, are as follows:—

MINERALS UNDER RAILWAYS.

Amendment of 8 & 9 Vict. c. 20, ss. 78 to 85, as incorporated in future Acts.

15. The Railways Clauses Consolidation Act, 1845, as incorporated in any Act, order, or other instrument relating to a railway company passed or made after the passing of this Act, shall, except as otherwise expressly provided in that Act order or instrument, have effect as if for sections seventy-eight to eighty-five thereof, inclusive, the following provisions were substituted, and as if the First, Second and Third Schedules to this Act were

inserted in that Act as the First, Second and Third Schedules thereto.

Conditions under which minerals under railway may be worked.

78.—(1) If the mine owner of minerals lying under an area of protection as hereinafter defined is desirous of working any such minerals, he shall give to the company and also to the royalty owner (if any) notice of his intention so to do at least thirty days before the commencement of the working and on the receipt of such notice the company and the royalty owner respectively may cause the minerals to be inspected by any person appointed for the purpose by the company or royalty owner as the case may be.

(2) If it appears to the company that the working of any of the minerals to which such notice relates will be likely to damage the railway or works or any part thereof, the company may, at any time after the receipt of such notice, give a counter-notice to the mine owner requiring him to leave unworked all or any part of such minerals, and the counter-notice shall specify the minerals (hereinafter referred to as the specified minerals) so required to be left unworked and the particular portion of the railway or works (hereinafter referred to as the protected works) for the support of which the specified minerals are required to be left unworked.

(3) Where any such counter-notice has been served on the mine owner, he shall forthwith serve a copy thereof on the royalty owner (if any).

(4) Where any such counter-notice has been served on the mine owner, the specified minerals shall not be worked or got after the service of the counter-notice, and the company shall pay compensation to the mine owner and the royalty owner (if any) for the loss caused by the specified minerals being left unworked.

(5) The area of protection in relation to any seam of minerals shall be the area comprising any railway or works of the company and such a lateral distance therefrom, on all or both sides thereof, as is equal at each point along the railway to one-half of the depth of the seam at that point or forty yards, whichever be the greater; and, when the said lateral distance exceeds forty yards, the area of protection shall be divided into two areas:

(a) an inner area of protection consisting of the area comprising the railway or works and a distance of forty yards therefrom on all or both sides thereof; and

(b) an outer area of protection consisting of so much of the area of protection as is not included in the inner area of protection.

Compensation for leaving minerals unworked.

78A.—(1) The compensation payable by the company to the mine owner and the royalty owner respectively for the loss caused by the specified minerals being left unworked shall, in default of agreement, be determined by arbitration:

Provided that so far as such compensation is payable in respect of the value of specified minerals—

(i) the compensation payable to the mine owner and to the royalty owner shall be separately assessed;

(ii) the compensation payable to the mine owner shall be a sum for each ton of the specified minerals, the rate per ton in the case of minerals lying under the outer area of protection being one-third of the rate which is or would be awarded in the case of minerals lying under the inner area of protection;

(iii) the compensation payable to the royalty owner shall be based on the amount which would have been received from time to time

by way of royalty in respect of the specified minerals if they had been worked out in the ordinary course, and the royalties payable had been—

(a) in the case of such of the specified minerals as lie under the inner area of protection, the same as those reserved by and payable under the lease comprising the minerals and subsisting at the date of the counter-notice; and

(b) in the case of such of the specified minerals as lie under the outer area of protection, one-third of the royalties so reserved and payable with the addition to such one-third of one penny per ton;

(iv) in every case the arbitrator shall state in his award the tonnage of the specified minerals on which his award is based.

(2) The mine owner shall also be entitled to be paid by the company the amount of any increase in the cost of working any part of his minerals (other than the specified minerals) which may have been caused by the failure of the company to give the counter-notice within such a reasonable time as would have enabled the mine owner to avoid such increase in cost, and, in default of agreement, the amount so payable by the company shall be determined by arbitration.

Power to work minerals not affected by a counter-notice.

79.—(1) If within thirty days from the service by a mine owner on the company of a notice of intention to work any minerals no counter-notice is served by the company, the mine owner may, after the expiration of those thirty days, and until a counter-notice is served, work any minerals to which the notice relates, so, nevertheless, that the same be done in the manner proper and necessary for the

beneficial working thereof, and according to the usual manner of working such minerals in the district where the same shall be situated.

Where a counter-notice is served, whether before or after the expiration of the said thirty days, and the counter-notice does not require the mine owner to leave unworked the whole of the minerals to which the notice relates, the foregoing provisions shall apply to any minerals to which the notice relates which are not specified minerals in like manner as if no such counter-notice had been served.

(2) If any damage or obstruction is occasioned to the railway or works by any improper working of such minerals, the same shall be forthwith repaired or removed (as the case may require) and such damage made good by the mine owner at his own expense; and if such repair or removal is not forthwith done, or, if the company think fit, without waiting for the same to be done by the mine owner, they may execute the same and recover from the mine owner the expense occasioned thereby by action.

Liability in respect of authorised workings.

79A.—(1) If a mine owner works any minerals lying under any part of the area of protection in the manner authorised by this Act, he shall nevertheless become liable on demand by the company (subject as hereinafter provided) to contribute towards the expenses properly incurred, or to be incurred, by the company from time to time thereafter in making good any damage caused by such working to the railway or works of the company (not being protected works comprised in any counter-notice relating to such area of protection) the appropriate percentage (if any) of those expenses, the appropriate percentage being such as is specified in the First Schedule to this Act according to the depth of the minerals being so worked.

(2) The liability of a mine owner under this section in respect of any part of the railway or works on which such expenditure has been incurred shall not exceed an aggregate sum equivalent to sixpence for each ton of the commercially workable minerals, gotten or ungotten, in such part of any seams as lies under the area ascertained as respects the several seams in accordance with the rules contained in the Second Schedule to this Act, being seams which have been or are being worked under such area as aforesaid:

Provided that, in ascertaining such aggregate sum as aforesaid, minerals gotten more than six years before the date on which a contribution shall have been demanded by the company under this section shall not be reckoned.

(3) Any mine owner making a contribution under this section, who is a lessee, shall be entitled to deduct from any royalties then or thereafter becoming due from him to the royalty owner under the lease, one-third part of the amount which he has so contributed as aforesaid, subject, however, to this limitation: that if the royalty payable by the mine owner under his lease is at the rate of less than six pence per ton, the amount deducted shall not exceed the amount produced by multiplying one-third of such rate per ton by the tonnage of the minerals with referance to the aggregate amount of which the maximum liability of the mine owner is to be so calculated as aforesaid; and, where the mine owner is entitled to make such a deduction, the sum reserved by and payable under the lease shall be deemed to be the net amount arrived at after making the deduction:

Provided that no such deduction shall be allowed when the liability of the mine owner to the company is a liability arising out of an arrangement between the mine owner and the company with respect to the working of minerals under or near the railway or works.

(4) The liability of a mine owner under this section shall be subject to the following further limitation as respects damage done by workings in any single mine, that is to say, that when the aggregate of the sums paid by the mine owner in satisfaction of such liability amounts to a sum equivalent to sixpence for each ton of commercially workable minerals, gotten or ungotten, in such part of any seams as lies within the mine and under an area extending laterally on both sides of the railway or works to a distance ascertained in accordance with Rule 1 of the said Second Schedule and extending longitudinally to a distance co-extensive with the portion of the railway lying over or adjacent to the mine, being seams which have been or are being worked under such area as aforesaid, the mine owner shall not be liable to make any further contribution under this section towards the expenses of making good any damage caused to any part of the railway or works by the working of such seams as aforesaid in that mine.

For the purposes of this provision, all the minerals which the mine owner is entitled to work, and which have been, or would in the ordinary course of events and in accordance with good mining practice be, worked from the same shafts or adits shall be deemed to be a single mine.

Where the liability of a mine owner under subsection (2) of this section is reduced by the operation of this subsection, the right of the mine owner under subsection (3) thereof to make deductions from royalties shall be proportionately reduced.

(5) Where a single mine, as hereinbefore defined, is held under leases granted by more than one lessor, any deductions which the mine owner is authorised under this section to make shall be made from the royalties payable to such one or more of such lessors, and in the latter case in such proportions, as in

default of agreement may, on the application of the mine owners or any of the royalty owners, be determined by arbitration.

(6) If any dispute arises as to the amount of the expenses towards which a mine owner is liable to contribute under this section, or the amount of his contribution, or the amount to be deducted as between a mine owner and a royalty owner, it shall be settled by arbitration, and, where any such arbitration between a company and a mine owner is to be held, the royalty owner (if any) shall be entitled to have notice of the intended arbitration, and to appear and be heard at the arbitration proceedings.

Notices and accounts with respect to damage.

79B.—(1) When and so far as reasonable and practicable, the company shall give notice to the mine owner and the royalty owner (if any) affected specifying particulars of—

(i) the railway or works to which damage has been caused or to which damage is apprehended from the working of any minerals under the area of protection sufficient to enable the same to be identified;

(ii) the nature of the damage or apprehended damage; and

(iii) the nature of the works intended to be carried out for the purpose of making good or preventing the damage.

(2) The company shall keep separate accounts differentiating the cost of the ordinary maintenance of the railway or works from the cost of making good any damage caused to the railway or works by the working of any minerals under the area of protection, and such accounts shall, at all reasonable times, be open for inspection by or on behalf of a mine owner working minerals under or near to such railway or works and the royalty owner (if any) of such minerals.

Rights of access through specified minerals.

80. If the working of any minerals is prevented under this Act by reason of a counter-notice, a mine owner whose minerals extend so as to lie on both sides of the specified minerals may cut and make such airways, headways, gateways, or water levels through the specified minerals and the strata above or below the same or any of them as may be requisite to enable him to ventilate, drain, and work his remaining minerals; but no such airway, headway, gateway, or water level shall be cut or made upon or so as to injure any part of the protected works, or within forty yards of any other airway, headway, gateway, or water level, nor shall the same without the consent of the company (which consent shall not be unreasonably withheld) be greater than eight feet wide and eight feet high, unless the top of the same is more than one hundred and sixty yards below the average rail level of the protected works, or, if the top exceeds that distance, than thirteen feet wide and eight feet high.

Additional expenses for severance.

81.—(1) Where a counter-notice has been given by the company to a mine owner, the company shall from time to time pay to the mine owner the appropriate percentage (if any) of all such additional expenses and losses as may be incurred by such mine owner in consequence of such counter-notice by reason of—

(i) the continuous working of the mine being interrupted; or

(ii) the mine being worked in such manner and under such restrictions as not to prejudice or injure the protected works.

(2) For the purpose of this section, the appropriate percentage means the percentage determined in accordance with the rules contained in the Third Schedule to this Act.

(3) If any question or dispute arises between the company and the mine owner concerning the amount of such losses or expenses, or as to the appropriate percentage, it shall be settled by arbitration.

(4) Where the minerals specified in a counter-notice lie in different seams, the amount payable by the company to the mine owner under this section shall be calculated separately as respects each seam:

Provided that, where the works on which any additional expenditure is incurred serve more than one seam, that expenditure shall, for the purposes of this section, be apportioned between the seams served in such manner as, in default of agreement, may be determined by arbitration.

Compensation to surface owners.

82. If any loss or damage is sustained by the owner, lessee, or occupier of the land over any specified minerals (not being the owner or lessee of the specified minerals) by reason of the making of such airway or other authorised work as aforesaid, where neither that work nor any like work, would have been necessary save on account of the prevention of the working of the minerals, the company shall make full compensation to such owner, lessee, or occupier of the surface for the loss or damage sustained by him, such compensation in default of agreement to be determined by arbitration.

Rights of inspection.

83.—(1) For ascertaining whether or not any minerals are being worked or are about to be or have been worked so as to damage the railway or works of a company, any person appointed by the company may, after at least twenty-four hours notice has been given by the company, enter upon any land (through or near which the railway passes) which the company believe to contain or to have contained such minerals, and may enter into and return from any such minerals or the works connected therewith; and, for that pur-

pose, the person so appointed may make use of any apparatus or machinery belonging to a mine owner, and use all necessary means for discovering the distance from such railway or works to the parts of the minerals which are being or have been worked or are about to be worked; and, after giving a like notice, may inspect and take copies of so much of the working plans and sections of the mine as relate to minerals the working whereof affects or has affected or may affect the railway or works.

(2) A mine owner who desires to work any minerals under or near to the railway or works of the company, and also the royalty owner (if any) or any person duly authorised by either of them, may, at any time, either before or during or after the working thereof, upon giving at least twenty-four hours notice to the company, and subject to such reasonable conditions as may be imposed by the company, enter upon the railway or works and inspect the same and take levels or particulars thereof.

Penalty for refusal to allow inspection.

84.—(1) If any mine owner refuses to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works or to inspect and take copies of such plans and sections in manner aforesaid, every person so offending shall, for every such refusal, become liable to pay to the company a sum not exceeding twenty pounds.

(2) If the company refuse to allow a mine owner or royalty owner or such duly authorised person as aforesaid to enter upon or inspect any railway or works or to take levels and particulars thereof in manner aforesaid, the company so offending shall, for every such refusal, become liable to pay to the mine owner or royalty owner a sum not exceeding twenty pounds.

Protection against improper working.

85. If it appears that any minerals have been worked or are being worked contrary to the provisions of this Act or the special Act, the company may, if they think fit, give notice to the mine owner thereof, requiring him to construct such works and to adopt such means as may be necessary or proper for making safe such railway or works and for preventing injury thereto; and if, after such notice, the mine owner shall not forthwith proceed to construct the works necessary for making safe the railway, the company may construct such works and recover the expense thereof from the mine owner by action.

Power to vary rights by agreement.

85A. Notwithstanding anything contained in this Act, a mine owner, a royalty owner, and the company or any two of them may, by agreement, alter, extend, or otherwise vary their respective rights under the provisions of this Act with regards to any minerals to which this Act applies, but not so as to prejudice the rights of any mine owner, royalty owner, or company not a party to the agreement without his or their consent.

Savings.

85B.—(1) Nothing in this Act shall affect any agreement between the mine owner and the royalty owner for the payment of any rent or royalty:

Provided that—

(i) the payment of compensation by the company to the royalty owner in respect of any minerals shall extinguish any liability by the mine owner to pay any royalty in respect of the same minerals;

(ii) the mine owner shall be entitled to make such deductions as are authorised by subsection (3) of section 79A of this Act notwithstanding anything in any agreement between him and the royalty owner entered into before the first day of August, nineteen hundred and twenty-

three, unless the agreement was made after the first day of November, nineteen hundred and twelve, and expressly or by necessary implication provided for the payment of royalties in respect of the minerals supporting the railway or works in the event of the mine owner working them in virtue of a right acquired by agreement or statute or otherwise, or for the payment of royalties in respect of such minerals whether they are or are not worked;

(iii) if the exercise by the company of powers conferred upon them by the foregoing provisions of this Act as to minerals in the area of protection will prevent the mine owner from working such quantity of minerals as at the royalties reserved will produce the sum total of the fixed or minimum rent remaining payable under the lease, or otherwise occasions serious hardship having regard to the obligation of the mine owner to pay such rent, or owing to any provision in the lease restricting the time within which a deficiency due to previous short working may be made good, such adjustment shall be made between the royalty owner and the mine owner as, failing agreement, may be determined by arbitration, and any question whether the circumstances are such as to give rise to such a right of adjustment shall be similarly determined.

Where at the time of the exercise by the company of such power as aforesaid any deficiency due to previous short working which may be made good in a subsequent period exists, the amount of such deficiency shall be treated for the purposes of this proviso as if it formed part of the sum total of the fixed or

minimum rent remaining payable under the lease.

(2) Nothing in this Act shall alter, diminish or affect any right to let down the surface, either unconditionally or subject to payment of compensation, or to any other condition, which a mine owner or royalty owner may possess, whether by statute grant lease agreement or otherwise, derived from a title antecedant to the acquisition by the company of their interest in the surface, or conferred on him by a reservation contained in the grant to the company, and a mine owner having such a title and having served a notice in accordance with this Act with respect to the working of any minerals, shall be free to work any such minerals, as to which a counter-notice shall not have been received, discharged from all the restrictions and provisions of this Act, other than those contained in subsection (2) of section seventy-nine of the Act, but, if a counter-notice is served, the minerals to which such counter-notice relates, shall, for the purposes of the assessment of compensation payable to the mine owner or royalty owner under this Act for leaving the same unworked, be deemed to be minerals lying wholly under the inner area of protection, and the appropriate percentage for the purpose of section eighty-one of this Act shall be one hundred.

Serving of notices, counter-notices, &c. 44 & 45 Vict. c. 41.

85c. Section sixty-seven of the Conveyancing Act, 1881, shall apply to notices and counter-notices and copies thereof required or authorised to be served or given under the provisions of this Act with respect to mines lying under or near the railway, as if it were herein re-enacted and in terms made applicable to such notices, counter-notices and copies thereof, and to the persons by or on whom the same are so required or authorised to be served.

Interpretation.

85D.—(1) In the foregoing provisions of this Act with respect to mines lying under or near a railway, unless the context otherwise requires—

"Mine owner" includes the owner, lessee, or other person entitled to work and get minerals;

"Seam" in relation to minerals includes bed, lode and vein;

"Surface" in relation to land includes any buildings, works or things erected, constructed, or growing thereon;

"Royalty" includes rent and any other reservation in respect of minerals by the acre, ton or otherwise;

"Royalty owner" includes any person entitled to receive a royalty in respect of minerals;

"Deficiency due to short working" means the amount by which the royalties payable under a lease of the minerals worked fall short of the fixed or minimum rent;

"Lease" includes an under-lease or other tenancy and a licence;

"Lessee" includes an under-lessee and a licensee.

(2) For the purposes of the said provisions, the depth of a seam at any point of the railway shall be taken to be the distance between the rail level and the point where a line drawn vertically through the centre of the railway would first cut the seam of minerals, except that for the purpose of ascertaining the area of protection, but not for any other purpose, the said distance shall, where the railway is carried through a tunnel, be measured from the point where the said line would cut the natural surface of the land instead of from the rail level.

(3) Where in an arbitration under the said provisions there are more than two parties involved, then, unless all the parties otherwise agree, the arbitration

shall be conducted by a single arbitrator appointed by the Board of Trade, and the provisions of this Act with respect to the settlement of disputes by arbitration shall apply as if all the parties had concurred in his appointment as a single arbitrator.

Exemption from liability to leave support otherwise than under Act or agreement.

85E. Save as in this Act, or the special Act, or under any agreement between the company and the mine owner expressly provided, the mine owner as between himself and the company—

(a) shall not be under any liability to leave support either inside or outside the area of protection; and

(b) shall be entitled to remove such support without being liable for any damage thereby caused to the railway or works or any part thereof; but so that the removal shall be done in a manner proper and necessary for the beneficial working of the minerals and according to the usual manner of working minerals in the district in which the same is situate.

Application to existing railways, &c.

Sect. 16 of the Mines (Working Facilities and Support) Act, 1923, is as follows:—

16.—(1) Where—

(a) a special Act, order, scheme, or certificate confirmed by or having the force of an Act of Parliament relating to a railway company, passed or confirmed before the commencement of this Act, incorporates sections seventy-eight to eighty-five, inclusive, of the Railways Clauses Consolidation Act, 1845, and does not prescribe any distance in lieu of the distance of forty yards mentioned in section seventy-eight of that Act; or

(b) a special Act relating to a railway company, passed before the commencement of this Act, does not incorporate the said sections, but

contains provisions similar thereto, and by the provision similar to the said section seventy-eight prescribes a distance of forty yards;

the Act, order, scheme, or certificate shall, as from the commencement of this Act, take effect as if the provisions which by this Part of this Act are to be substituted for the said sections seventy-eight to eighty-five were substituted for those sections as incorporated in the Act, order, scheme, or certificate or for the similar provisions contained in the special Act as the case may be, and as if the Act, order, scheme, or certificate incorporated or included the First, Second, and Third Schedules to this Act, subject, however, to the provisions hereinafter contained in this section.

(2) If at the commencement of this Act minerals lying under the outer area of protection are being worked by a mine owner, he shall, within one month after the commencement of this Act, give such notice as would after the commencement of this Act have been required to be given before such minerals were commenced to be worked, and, if such notice is so given, it shall be deemed for the purposes of the provisions of section seventy-eight of the Railways Clauses Consolidation Act, 1845, as amended by this Act, to have been given more than thirty days before the date on which it is in fact given, and the minerals worked before the notice is given shall, for the purposes of the same provisions, be deemed to have been worked since the expiration of those thirty days.

(3) Any mine owner shall be liable to contribute towards the expenses properly incurred by the railway company subsequent to the commencement of this Act in making good damage caused to any railway or works of the company by any working of minerals within the six years immediately preceding the commencement of this Act in like manner as if this Act had been in force at the date of such working; but, save as aforesaid, the mine owner shall be relieved of all liability to the company with respect to the working of any minerals prior to the

passing of this Act, except a liability arising under an arrangement with the company.

The provisions of subsections (2), (3), (4), (5) and (6) of section 79A of the Railways Clauses Consolidation Act, 1845, as amended by this Act, shall apply in respect of the liability of a mine owner under this subsection in like manner as they apply in respect of his liability under that section.

(4) Nothing in this section shall—

(a) take away, diminish, or prejudicially alter or affect any estate right or interest in minerals which may have been acquired by a railway company before the commencement of this Act under or by virtue of any express provision in any deed or contract, or under or by virtue of the exercise of their powers under sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, or any right of support from minerals which any such company may have so acquired, or any compensation paid or payable by any such company in consequence of the exercise before the commencement of this Act of any such powers as aforesaid; or

(b) affect any agreement subsisting between a railway company and a mine owner or a royalty owner at the commencement of this Act with regard to the working of, or the leaving unworked, minerals lying under or near to any railway or works of the company, so long as the agreement continues in force, and any such agreement shall, notwithstanding anything in this section, continue in force until determined by effluxion of time, or by the exercise of any power to determine it conferred by the agreement, nor shall anything in this section prevent the entering into a new agreement.

Railways Clauses Act, 1863, s. 20.

Additional compensation may be given if damage is caused to owners by extension of time for compulsory purchase.

Under sect. 20 of the Railways Clauses Act, 1863, where a railway is authorised to be constructed, and the time limited by the special Act for the exercise of powers of compulsory purchase of lands or of powers for construction of the railway and works, is extended by a subsequent special Act, the tribunal assessing the compensation to be paid to the owner or occupier of lands taken or used for the purpose of the railway and works, or injuriously affected by the construction of the authorised works, shall have regard to the additional damage (if any) sustained by the owners or occupiers by reason of the extension of time.

It will have been seen in Chapter V., when dealing with entry on lands by the promoters, that under the provisions of sect. 85 of the Lands Clauses Act, 1845, promoters are allowed to enter on land before payment of compensation, on complying with the provisions as to giving a bond and payment into Court of the amount of the purchase-money and compensation determined by a surveyor appointed by two justices.

Railway Companies Act, 1867.

In case of railway company surveyor appointed under sect. 85 Lands Clauses Act, 1845, to be appointed by Board of Trade.

Seven days' notice to be given of intention to apply to the Board of Trade.

Valuation to include compensation for all damage or injury

By the Railway Companies Act, 1867, if a railway company exercise the powers conferred by sect. 85 of the Lands Clauses Act, 1845:—

1. The surveyor to be appointed as that section provides, is to be appointed by the Board of Trade instead of two justices, and all the provisions of that Act relating to a surveyor appointed by two justices apply to a surveyor so appointed by the Board of Trade.

2. The company must give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry by the company.

3. The valuation to be made by the surveyor so appointed is to include the amount of compensation for all damage and injury to be sustained by reason of the

exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation. sustained by exercise of the powers conferred by sect. 68.

4. The sureties to the bond to be given by the company under that section are, in case the parties differ, instead of being approved of by two justices, to be approved of by the Board of Trade after hearing the parties. Sureties to be approved by Board of Trade.

The Regulation of Railways Act, 1868.

Under the provision of sect. 41 of the Regulation of Railways Act, 1868, the railway company can apply to a judge of the High Court that the question between the parties shall be tried as an issue in the High Court, but the jury must in giving their verdict separate the amount awarded as value of the land, and the amount awarded for injurious affection as provided by sect. 49 of the Lands Clauses Act, 1845. Regulation of Railways Act, 1868, s. 41. Compensation may be assessed by High Court judge.

By the combined effect of sect. 3 (1) (d) of the Ministry of Transport Act, 1919, and sect. 17 of the Railways Act, 1921, the Minister of Transport may make Orders authorising the acquisition of land or easements and construction of certain works in order that railway companies may be able to effect alterations, extensions and improvements of existing works in pursuance of an Order of the Railway and Canal Commission of the Minister of Transport under the Railways Act, 1921. Ministry of Transport Act, 1919, and Railways Act, 1921.

Light Railways.

The Railways Act, 1921, ss. 68 to 74, repeal and amend some of the clauses of the Light Railways Act, 1896, and the Light Railways Act, 1912. Light railways.

Sect. 68 (1) enacts that Orders under the Light Railways Act, 1896, as amended by any subsequent enactment, shall, instead of being made by the Light Railway Commissioners and confirmed by the Minister of Transport as successor to the Board of Trade in manner provided by the 1896 Act, be made by the Minister of Transport.

The remaining parts of the section deal with the substitution of the Minister of Transport for the Commissioners, in matters where the Commissioners are referred to in the 1896 Act and amending Acts.

Sect. 69 provides that where an Order made under the 1896 Act incorporates the Lands Clauses Acts, it may incorporate those Acts subject to any modifications contained in the Order, being modifications of those Acts made or authorised to be made by the Development and Road Improvement Funds Act, 1909.

Those modifications are contained in the Schedule to the latter Act, and will be found to deal with the appointment of a single arbitrator to settle any question of disputed compensation, and also, generally, as to what an Order should contain.

It should be noted that sect. 13 of the Light Railways Act, 1896, still unrepealed, provides, *inter alia*, that in determining the amount of compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed light railway.

CHAPTER XIII.

COSTS.

Costs when enquiry is before a sheriff's jury—Lands Clauses Act, 1845, s. 51—When sum awarded is greater than "sealed offer."—When sum awarded is less or equal to "sealed offer"—If owner fails to appear at enquiry—Taxation of costs—Lands Clauses (Taxation of Costs) Act, 1895—Costs of enquiry before arbitrators under the Lands Clauses Act, 1845, s. 34—Promoters pay all costs unless sum awarded is less or equal to "sealed offer"—Note as to costs in Annual Practice—R. S. C., Ord. LXV. r. 1—Scale of fees allowed to surveyors by Taxing Masters—Costs of proceedings before official arbitrator under Acquisition of Land Act, 1919—Sect. 5 (4), discretion of arbitrators—Arbitrators may award claimant part of his costs or a lump sum as costs—Examples of orders as to costs made by official arbitrators.

I.—*Costs in Proceedings under the Lands Clauses Acts.*

(a) *Costs in proceedings when enquiry is before a sheriff's jury.*—Sect. 51 of the Lands Clauses Act, 1845, provides that if the jury give a sum which is greater than the sum previously offered by the promoters, the promoters bear all the costs of the enquiry.

Lands Clauses Act, 1845, s. 51.

Effect of sealed offer upon costs.

If the jury give the same or less sum than the sum previously offered by the promoters, or if the owner of the lands shall have failed to appear at the time and place appointed for the enquiry, having received due notice thereof, one-half of the costs of summoning, impanelling and returning the jury, and of taking the enquiry and recording the verdict and judgment therein, shall, in case such verdict shall be taken, be defrayed by the owner of

the lands, and the other half by the promoters, and each party shall bear his own costs other than as aforesaid, incident to such enquiry.

Sect. 51 applies to all enquiries before sheriff's jury.

This section applies to all enquiries before sheriffs' juries, whether the enquiry be as to the value of land taken, or as to injurious affection of land belonging to the owner of the land taken or belonging to a party whose land is not taken but only claiming for injurious affection by reason of the execution of the authorised works.

In other words, the section applies to cases brought within the provisions of sect. 68 of the Lands Clauses Act, 1845, as well as those under sect. 18, where notice to treat has been given for the compulsory purchase of land.

Master of High Court to settle costs.

If any difference arises as to what are proper costs of the enquiry, the dispute is settled by any of the Masters of the High Court on the application of either party.

Land Clauses Act, 1845, s. 52.

Sect. 52 enacts that such costs shall include all reasonable costs, charges and expenses incurred in summoning, impanelling and returning the jury taking the enquiry, the attendance of witnesses, the employment of counsel and solicitors recording the verdict and judgment and otherwise incidental to the enquiry.

Decision of Master final.

The decision of the Master is final as to costs to be allowed. There is no provision in the Act for the decision of the Master to be reviewed by a judge as would happen in the taxation in an ordinary action in the High Court, and therefore the judges of the High Court have no jurisdiction in the matter. (*Owen* v. *London and North-Western Railway*, L. R. 3 Q. B. 54, and *Earl of Shrewsbury* v. *Wirral Railways Committee*, (1895) 2 Ch. 812.)

Lands Clauses (Taxation of Costs) Act, 1895.

It is by reason of the passing of the Lands Clauses (Taxation of Costs) Act, 1895, that the costs referred to in sect. 52 can be taxed by any Master of the Supreme Court, and therefore a Chancery Master has jurisdiction to do so equally with a King's Bench Master. (*Covington* v. *Metropolitan District Railway*, (1903) 1 K. B. 231.)

The offer by the promoters referred to in sect. 51 is the sealed offer. It is not necessary that any offer should be made, but if made, must be made at the same time as the promoters give notice to the claimant of their intention to cause a jury to be summoned by the sheriff, but not less than ten days before so causing the jury to be summoned. (Sect. 38.) If no offer is made all the costs will fall upon the promoters, whatever sum be given by the verdict of the jury. The offer can be withdrawn at any time prior to the hearing before the jury, and can be accepted by the claimant at any time before the jury give their verdict. (*R.* v. *High Bailiff of Westminster*, (1903) 2 K. B. 189.) If the offer is accepted the jury must be directed by the undersheriff to give a verdict for the amount contained in the sealed offer.

Costs of arbitration. Lands Clauses Act, 1845, s. 34. Promoters bear all costs unless a sum is awarded equal to or less than "sealed offer."

(b) *Enquiry before arbitrators under the Lands Clauses Act*, 1845.—If the enquiry is before arbitrators under the Lands Clauses Act, 1845, sect. 34 of the Act applies, and provides that all the costs of the arbitration and incident thereto are to be borne by the promoters, unless the arbitrators award the same or less sum than has been offered by the promoters, in which case each party bears his own costs incident to the arbitration, and the costs of the arbitrators are to be borne by the parties in equal proportions.

Offer not to be known to arbitrators until after award as to amount.

The offer referred to here is the sealed offer made by the promoters prior to the arbitration. The amount of the offer is not made known to the arbitrators until after they have made their award as to the amount. The offer must be a plain and unconditional one of compensation as purchase-money and compensation.

In *Balls* v. *Metropolitan Board of Works* (1866), L. R. 1 Q. B. 337, Blackburn, J., said: "If the offer of compensation is of one sum for compensation and costs, the claimant cannot know how much he is to have for the injury to his land, and how much for his costs. He

might, therefore, be misled by it. The offer required by the statute must be a plain and unconditional offer of compensation for injury to the land."

If the claimant is before an arbitrator the incidence of costs will depend upon whether he should have accepted any offer made by the promoters, and this offer must also be unambiguous and unembarrassing. In *Foster* v. *G. W. Railway,* (1910) 2 K. B. 256, Phillimore, J., said: "An offer may, I suppose, be accompanied by any number of reasons for naming a particular figure and any amount of narrative of fact and statement of argument, and it would be none the less an offer. But there must be no doubt that such statements are statements of reasons, facts and arguments. If statements of expectation are introduced they must be couched in terms which make it clear that they do not amount to promises or representations that the events which are expected shall take place. The terms of this letter (the alleged offer) leave it doubtful whether it intends to convey a representation that a certain road will be made or a mere statement of argument and expectation. Persons who use such phrases as 'on the understanding' that such and such events shall happen, have only themselves to blame if their words appear to others to import a condition into their offer."

Although there is not any direct authority dealing with the point, it is submitted that the sealed offer can be accepted by the claimant at any time before the arbitrators publish their award.

The following note to Order LXV., r. 1, of the Rules of the Supreme Court on costs under the Lands Clauses Act, 1845, is, by permission of the publishers of the Annual Practice, here set out:—

Note to R. S. C., Ord. LXV., r. 1.

Lands Clauses Consolidation Act, 1845 (8 *&* 9 *Vict. c.* 18).—Costs payable under this Act are of three sorts: (1) costs of ascertaining the compensation to be paid, whether the amount be determined by an

enquiry before a jury or by arbitration; (2) costs of conveyances; and (3) costs of dealing with purchase-money paid into Court.

The *costs of ascertaining compensation* are of two sorts: (a) the costs of summoning, impanelling and returning the jury and of taking the enquiry and recording the verdict or judgment thereon, called in *Bray* v. *S. E. R.* (1849), 19 L. J. Q. B. 11, the formal costs; and (b) the costs incurred in the attendance of witnesses, the employment of counsel and solicitors and otherwise incident to the enquiry. The incidence of both sorts as between landowner and undertakers is determined by the relation of the verdict of the jury to the previous offer by the undertakers as fixed by sect. 51 of the Act, or in the case of an arbitration by sect. 34 of the Act, provided the award covers the same ground as the offer (*Miles v. G. W. Ry.*, (1896) 2 Q. B. 432). Where the award is in the form of a special case, the costs of the special case are included (*Sidney* v. *N. E. Ry.*, (1916) 2 K. B. 760). These costs have only to do with value and not with title (*Re East London Ry., Oliver's Claim* (1890), 24 Q. B. D. 507). These costs are by the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11), to be taxed by one of the Masters of the Supreme Court, *i.e.*, since 1902 any one of the Masters in the Supreme Court Taxing Office (*Covington* v. *Metr. Dist. Ry.*, (1903) 1 K. B. 231). His taxation cannot be questioned by way of review (*Sandbach Charity Trustees* v. *North Staffordshire Ry.* (1877), 3 Q. B. D. 1), though it is probable that proceedings by way of mandamus or prohibition would apply on the analogy of the decision in *Madeley* v. *Greenwood* (1897), 42 Sol. Jo. 34. The taxation is "as between the parties" (58 & 59 Vict. c. 11), *i.e.*, a party and party taxation.

The remainder of the same note refers to the costs of

conveyance to the promoters, and the costs of dealing with purchase-money paid into Court.

Upon a taxation the Masters of the Supreme Court have adopted the following table of surveyors' fees with the explanation given by the Practice Notes set out hereunder. The said notes and table are taken from the Annual Practice:—

Scale of fees allowed to surveyors.

(1) The table is intended as a general guide, and to be applied in ordinary cases and with due regard to the special circumstances of each case.

(2) As a rule only two qualifying witnesses will be allowed on the same branch of the case, but the number of qualifying witnesses called by the other side will be taken into consideration by the Master.

(3) The remuneration covers all professional fees and expenses except

(a) Attendance to give evidence, for which a fee of £3 3*s*. a day will be allowed. The Master may increase this fee to £5 5*s*.

(b) Necessary plans.

(c) When the witness has to go more than ten miles, travelling expenses and £1 1*s*. a day for hotel expenses.

(4) In case of extra work being undertaken by one of the surveyors, or in the case of only one surveyor being employed, the Master may increase the fee to such surveyor by an extra or special allowance.

Amount of Award or Verdict (not exceeding)	Fee.	Amount of Award or Verdict (not exceeding)	Fee.
£100 ...	£5 5 0	£4,600 ...	£25 4 0
300 ...	6 6 0	4,900 ...	26 5 0
400 ...	7 7 0	5,200 ...	27 6 0
500 ...	8 8 0	5,500 ...	28 7 0
600 ...	9 9 0	5,800 ...	29 8 0
700 ...	10 10 0	6,100 ...	30 9 0
850 ...	11 11 0	6,400 ...	31 10 0
1,000 ...	12 12 0	6,700 ...	32 11 0
1,300 ...	13 13 0	7,000 ...	33 12 0
1,600 ...	14 14 0	7,300 ...	34 13 0
1,900 ...	15 15 0	7,600 ...	35 14 0
2,200 ...	16 16 0	7,900 ...	36 15 0
2,500 ...	17 17 0	8,200 ...	37 16 0
2,800 ...	18 18 0	8,500 ...	38 17 0
3,100 ...	19 19 0	8,800 ...	39 18 0
3,400 ...	21 0 0	9,100 ...	40 19 0
3,700 ...	22 1 0	9,400 ...	42 0 0
4,000 ...	23 2 0	9,700 ...	43 1 0
4,300 ...	24 3 0	10,000 ...	44 2 0

Above £10,000, add £3 10*s*. per £1,000.

II.—*Costs when proceedings are before an official arbitrator under the Acquisition of Land Act*, 1919.

Costs under the Acquisition of Land Act, 1919, s. 5.

Sect. 5 (4) of the above Act provides that the costs of the arbitration are in the discretion of the official arbitrator subject to the provisions contained in sub-sects. (1), (2) and (3), and that he may direct to and by whom and in what manner they shall be paid. He is also entitled to direct that either party shall pay a portion only of the cost of the other party, and this is a very usual course adopted. In any case, he may disallow the costs of counsel. There are, however, certain limits to the discretion of the official arbitrator.

Sect. 5 (1) provides as follows:—

> "If the acquiring authority has made an unconditional offer in writing, and the sum awarded does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs, and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made."

It will be noted that the discretion of the official arbitrator is not entirely taken away, but the circumstances must be special circumstances before he can award costs other than in accordance with the terms of the sub-section.

Again, under sub-sect. (2), if the claimant does not comply with the provisions of the Act relating to giving full particulars of his claim and within a period sufficient to give the acquiring authority time to make a proper offer, the claimant is placed in the same position as if an unconditional offer had been made by the acquiring authority at the time when, in the opinion of the official arbitrator, sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer.

It will be seen, therefore, that the old procedure of the claimant making a claim far in excess of that which is likely to be awarded would now be a dangerous one, as the penalty of failing to substantiate it would be failure to obtain his own costs and the possibility of an order being made that the claimant shall pay the costs of the acquiring authority. As the result of enquiries it is found that in practice the official arbitrators have hitherto made very few such orders against the claimant, but on several occasions each party has been ordered to pay their own costs.

Another position is also dealt with by the Acquisition of Land Act, 1919.

Assuming that the claimant has given full particulars of his claim, and has made an unconditional offer in writing to accept a particular sum as compensation, and the sum awarded is equal to or exceeds that sum, sect. 5, sub-sect. (3), provides that the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the acquiring authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

To sum up the position as to costs under the Acquisition of Land Act, 1919—

(a) If the sum awarded equals or exceeds the amount the claimant has in writing unconditionally offered to accept, the acquiring authority must pay their own costs and the costs of the claimant incurred after the offer was made. This is subject to the discretion of the official arbitrator based on special reasons.

(b) If the sum awarded does not exceed the amount the acquiring authority has in writing unconditionally offered, the claimant must pay his own costs and the costs of the acquiring authority incurred after the offer was made, unless the official arbitrator shall, for special reasons, think proper not to make the order.

(c) If the claimant does not comply with the provisions of the Act as to giving particulars in sufficient time to allow the acquiring authority to make a proper offer, the claimant may be ordered to pay his own costs and also the costs of the acquiring authority incurred after such date upon which the official arbitrator thinks proper particulars should have been delivered, unless for special reasons the official arbitrator thinks proper not to make such order.

The official arbitrator, therefore, has an overruling discretion in all these cases.

Arbitrator may award claimant part of his costs.

The provision as to the right of the official arbitrator to award to a claimant a part of his costs, contained in sect. 5 (4) of the Acquisition of Land Act, 1919, was the subject of judicial decision in *Bradshaw* v. *The Air Council,* (1926) 1 Ch. 329. The case arose out of the award of an official arbitrator appointed under the Acquisition of Land Act, 1919. In dealing with the costs the official arbitrator directed the Air Council to pay £100 towards the costs of the claimant. The Court was moved by the claimant for the award to be remitted to the arbitrator on the ground that he had, in the above order as to costs, not properly exercised the discretion conferred upon him by the above sub-section. It was held that in awarding the lump sum of £100 the arbitrator had in terms awarded to the claimant part of his costs of the arbitration within the meaning of sect. 5, and that, as it seemed reasonably clear from the statute that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which the claimant had offered to accept, the arbitrator had an absolute discretion as to the costs, the motion to review the award failed.

Arbitrator may award a lump sum to either party as costs.

It is now the usual practice for the official arbitrator to give a lump sum in respect of the claimant's costs instead of ordering the acquiring authority to pay a proportion of the claimant's costs, or the claimant's taxed costs.

The following are examples of such orders being made as to costs, the details being taken from recent volumes of the "Estates Gazette" digest of cases.

1. Valuation for claimant, £495. Acquiring authority's valuation, £260.

Award, £365. Acquiring authority to pay costs on the award and £15 towards costs of claimant.

2. Valuation for claimant, £3,355; reduced to £2,000 at arbitration. Acquiring authority's valuation, £450.

Award, £700. Acquiring authority to pay costs on award and £15 towards costs of claimant.

3. Valuation for claimant, £350. Acquiring authority's valuation, £65.

Award, £70. Acquiring authority to pay fees on award and £5:5*s*. for solicitors' and valuers' fees.

4. Valuation for claimant, £2,070. He had offered to take £1,900. Acquiring authority's valuation, £1,284.

Award, £1,747. Acquiring authority to pay costs of award and £10 towards claimant's costs.

5. Valuation for claimant, £4,500. Sealed offer, £500. Acquiring authority's valuation at hearing, £550.

Award, £1,000. Acquiring authority to pay costs of award and £40 towards claimant's costs.

6. Valuation for claimant, £9,809. Acquiring authority's valuation, £3,300.

Award, £6,630. Acquiring authority to pay costs of award and £120 towards claimant's costs.

7. Valuation for claimant, £24,516. Acquiring authority's valuation, £9,000. Sealed offer, £9,000.

Award, £12,556. Acquiring authority to pay £100 towards claimant's costs and the fees on award.

8. Valuation for claimant, £3,472. Acquiring authority's valuation, £2,100.

Award, £2,580. Acquiring authority to pay £55 towards claimant's costs and fees on the award.

9. Valuation for claimant, £7,770. Acquiring authority's valuation, £3,400.

Award, £4,520. Acquiring authority to pay £50 towards the costs and fees on the award.

10. Valuation for claimant, £6,074. Acquiring authority's valuation, £3,750.

Award, £3,960. Acquiring authority to pay £25 towards claimant's costs and the fees on award.

The above particulars show that in proceedings brought within the provisions of the Acquisition of Land Act, 1919, costs awarded to a claimant as against a public body are on a very moderate scale compared with the costs which would have been recoverable if the proceedings had been brought against a statutory company under the Lands Clauses Act, 1845.

CHAPTER XIV.

COMPULSORY ACQUISITION OF LAND UNDER THE PUBLIC HEALTH ACTS, METROPOLIS ACTS, THE LOCAL GOVERNMENT ACT, 1894, AND GAS AND WATER ACTS.

Public Health Acts, 1875, 1907 and 1925—Power to compulsorily acquire for certain purposes—Service of notices on owners under sect. 176, Public Health Act, 1875—Compensation for damage, sect. 308—Rules as to arbitration, sect. 180—Public Health Act, 1925—New streets, compensation if more than 20 feet in excess of bye-law width—Tribunal, official arbitrator, betterment—Improvement line under sect. 33, Public Health Act, 1925—Compensation—Metropolitan Paving Act, 1817—Provisions of—Power to widen streets—Compensation—Official arbitrator to assess compensation—Case—No compensation for injurious affection by severance—Metropolis Management Acts, 1855 and 1862—Powers of London County Council and borough councils to repair sewers and execute works to prevent flooding—Metropolis Management (Thames River (Prevention of Floods)) Act, 1879—Local Government Act, 1894—Gas and water companies—Special Acts and Gas Clauses Act, 1847, and Waterworks Clauses Act, 1847.

1. *The Public Health Acts*, 1875, 1907 *and* 1925.

Public Health Act, 1875, s. 175, and Public Health Act Amendment Act, 1907.

Power to purchase compulsorily.

UNDER the provisions of sect. 175 of the Public Health Act, 1875, as amended and extended by sect. 95 of the Public Health Act Amendment Act, 1907, a local authority is authorised, for the purposes and subject to the provisions of the Acts, to purchase compulsorily or by agreement, or take on lease, sell or exchange any land, whether situate within or without their district. They may also buy up any water mills, dams or weirs which interfere with the proper drainage of, or the supply of water to, their district. The purposes of the Public

Health Act are such as deal with the disposal of sewage, water supply, provision of hospitals, mortuaries, highways, public pleasure grounds, market and slaughter houses, and other purposes which provide for the health of the public at large.

Any land acquired by a local authority and not required for the purposes for which these lands have been acquired, may be appropriated for any purpose approved by the Minister of Health (see the Ministry of Health Act, 1919, by which all the duties and powers of the Local Government Board were transferred to the Minister of Health), subject to any special covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the local authority, or to any special provisions affecting the use of the lands contained in any local Act. In sect. 95 of the Public Health Act Amendment Act, 1907, there is a further proviso that the local authority shall not on any land so appropriated create or permit any nuisance, nor sink any well for the public supply of water, or construct any station for generating electricity, sewage farm or hospital for infectious disease, unless after local enquiry and consideration of objections made by the person affected the Minister of Health, subject to such conditions as he thinks fit, authorises the work or construction.

Public Health Amendment Act, 1907, s. 95.

Sect. 176 of the Public Health Act, 1875, regulates the purchase of lands by a local authority for the purpose of the Act. Sub-sect. (1) enacts that the Lands Clauses Acts, 1845, 1860 and 1869, are incorporated in the Act, except the provisions relating to access to the special Act (sects. 150 and 151 of the Lands Clauses Act, 1845), and except sect. 127 (relating to the sale of superfluous lands).

Public Health Act, 1875, s. 176.

Sub-sects. (2), (3), (4) and (5) provide that the local authority, before putting in force any of the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, shall publish certain details in the local newspaper in November, serve

Public Health Act, 1875, s. 176 (2), (3), (4), and (5)

Service of notices prior to putting in

force compulsory powers.

a notice on every owner, &c. in December, giving particulars of the land it is intended to take in much the same form as it is given when applying to Parliament for compulsory powers, and afterwards present a petition to the Minister of Health.

The foregoing sections apply where land is purchased, and compensation can be obtained if damage is sustained by any person by reason of the exercise of the powers of the Act.

Public Health Act, 1875, s. 308.

Compensation for damage.

Sect. 308 provides that where any person sustains any damage by reason of the exercise of any of the powers of the Act in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such power; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by the Act, or if the compensation claimed does not exceed £20, the same may, at the option of either party, be ascertained by and recovered before a Court of summary jurisdiction.

Public Health Act, 1875, s. 180.

Rules as to arbitration.

The rules relating to arbitration under the Public Health Act, 1875, will be found in sect. 180, but they do not all now apply where land is acquired compulsorily under the provisions of the Public Health Acts. Such cases are now mainly governed by the provisions of the Acquisition of Land Act, 1919, and it will be found that the majority of the rules laid down by sect. 180 are inconsistent with those applicable to the appointment of an official arbitrator under the Acquisition of Land Act, 1919.

Public Health Act, 1875, ss. 179, 180, 181, apply to cases under sect. 308.

The provisions contained in sects. 179, 180 and 181, however, will apply to cases where a claim is made under sect. 308 by a person from whom no land has been taken, but who has sustained damage by reason of the exercise of the powers of the Acts. (*Ex parte Rayner*, 3 Q. B. D. 446.)

Certain new powers are given to local authorities under the Public Health Act, 1925.

Public Health Act, 1925, s. 31.

New streets.

Under sect. 31, whenever application is made to a local authority to approve plans of a new street, and such new street in the opinion of the local authority will form a main thoroughfare, or means of communication between main thoroughfares in its district, or a continuation of a main thoroughfare, the local authority may, as a condition of their approval, request that the new street shall be formed of such width as they may determine.

Compensation for prescribing extra width for new street.

If, however, such width exceeds by more than 20 feet the maximum width prescribed for a new street by any bye-laws or enactments with respect to the width of a new street which may be in force in the area, compensation must be paid for any loss or damage sustained by reason of the street being required to be a width greater than 20 feet in excess of such maximum width.

Road Improvement Act, 1925.

A somewhat similar provision will be found in Town Planning schemes, and also in the Roads Improvement Act, 1925.

Tribunal to assess compensation.

Betterment set off against compensation.

The amount of compensation is, in default of agreement, determined by arbitration in accordance with the provisions of the Acquisition of Land Act, 1919, that is to say, before an official arbitrator, but in estimating the amount of any such compensation, the benefit accruing to the person to whom the same shall be payable by reason of the widening of the street, is to be fairly estimated and set off against the compensation. In other words, the betterment principle is to be applied.

Public Health Act, 1925, s. 33.

Improvement line.

Under sect. 33 of the Public Health Act, 1925, when in the opinion of the local authority (a) any street repairable by the inhabitants at large is narrow or inconvenient, or without any sufficiently regular boundary line, or (b) it is necessary or desirable that such street shall be widened, the local authority may prescribe in relation to either side of the street, or at a distance of 15 yards from any street corner, the line to which the street shall be widened. This line is called in the section the "improvement line."

Compensation for injurious affection of property owing to fixing of an improvement line.

Sub-sect. (6) of the same section enacts that:—"Any person whose property is injuriously affected by the prescribing of an improvement line shall be entitled to obtain compensation in respect of such injurious affection from the local authority." There is a proviso that a person is not to be entitled to obtain compensation on account of any building erected or contract made, or other thing done after the date of the deposit under this section of the plan, not being work done for the purpose of finishing a building begun, or of carrying out a contract entered into before that date.

Arbitration under Acquisition of Land Act, 1919.

The amount of such compensation is, in default of agreement, determined by arbitration under the provisions of the Acquisition of Land Act, 1919. In determining the amount of such compensation the arbitrator should take into account, and embody in his award, any undertaking with regard to the exercise of their powers under the section in relation to the property affected which the local authority have offered to give to the claimant, and the terms of any undertaking so embodied in the award is binding on and enforcible against the local authority.

The local authority may purchase any land not occupied by buildings lying between the improvement line and the boundary of the street, or any interest in such land, and the provisions of the Lands Clauses Acts, including the provision in respect to the purchase and taking of lands otherwise than by agreement, except sect. 92 (parties not to be required to sell part of a house) and sect. 123 (limit of time for compulsory purchase) of the Lands Clauses Act, 1845, shall extend to such land or interest in land.

Betterment as result of improvement line.

In the assessment of compensation for injurious affection, or in respect of a purchase of land under this section, the benefits accruing to the person to whom the same is payable, by reason of the widening or improvement of the street, are to be fairly estimated and set off against the compensation. Any compensation for injurious affection

payable by a local authority under this section may be recovered summarily as a civil debt.

2. *The Metropolitan Paving Act,* 1817.

Metropolitan Paving Act, 1817, s. 80.

Power to widen.

Sect. 80 of the Metropolitan Paving Act, 1817, known as Michael Angelo Taylor's Act, enables a local authority in the metropolitan area to alter, widen and extend any street and pave the same, and for that purpose to acquire houses, lands and other hereditaments which project into or otherwise obstruct streets, and to pay the owners and occupiers for the same.

The local authorities in London are the councils of the metropolitan boroughs, and the councils of such areas within the metropolis which constitute cities, such as the City of Westminster.

Sect. 82.

Acquisition of Land Act, 1919, now applies to compulsory purchase.

By sect. 82, after providing for the panelling of a jury to assess the compensation (the proceedings being now before an official arbitrator under sect. 1, sub-sect. (1) of the Acquisition of Land Act, 1919), it is enacted that "the said jury shall inquire of the value of such houses, buildings, lands, tenements or hereditaments, and of the proportionate value of the respective estates and interests of all and every person or persons seised or possessed thereof, or interested therein, or of or in any part or parts thereof, and shall assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively for the purchase of such houses, buildings, lands, tenements or hereditaments, and of such respective estates and interest therein, and also for goodwill, improvement or any injury or damage whatsoever that may affect any such person or persons, party or parties either as leaseholders or tenants at will."

No compensation under sect. 82 for injurious affection.

In *Courtaulds, Limited* v. *City of London Corporation,* (1926) 2 K. B. 506, it was held that under the above sect. 82, a freeholder, part of whose land has been compulsorily acquired under the 1817 Act is not entitled to recover compensation for injurious affection by severance.

Avory, J., said that in the 1870 edition of Lloyd's Law of Compensation it is stated that there appears to be nothing in sect. 82 to warrant such a claim, except in the case of leaseholders and tenants at will, and Lord Hewart, C. J., in giving judgment, said: "It is common ground in this case that the provisions of that section (82) have neither been extended nor diminished by subsequent legislation; and it is an interesting fact that, notwithstanding that the statute in question has been in force 109 years, no claim such as is now put forward according to the recollection and records of the City of London authorities has ever been suggested."

In the 1817 Act there is no provision for payment of the owner or occupier's costs, but the question of cost will now be governed by the provisions of the Acquisition of Land Act, 1919.

Under the 1817 Act it is unnecessary to serve a notice to treat (*Lynch* v. *Commissioners of Sewers of the City of London*, 32 C. D. 85), but it is usual to serve one.

Metropolis Management Amendment Act, 1862, s. 73.

By the Metropolis Management Amendment Act, 1862, s. 73, the Metropolitan Paving Act, 1817, has been made to apply to the whole of the metropolis.

The Metropolis Management Acts, 1855 and 1862.

These Acts only apply to London, and the powers under them are now exercised by the London County Council (by reason of the powers, duties and liabilities of the Metropolitan Board of Works being transferred to the London County Council by sect. 40 (8) of the Local Government Act, 1888) and by the metropolitan borough councils (to which bodies the powers of the old elective vestries and district boards in the county of London were transferred by sect. 4 (1) of the Local Government Act, 1899). Under sect. 69 of the 1855 Act the borough council and the London County Council can repair and maintain sewers and carry out work to protect the area from floods. By sect. 135 the London County Council

must make compensation for any damage done in carrying out the works under the said section, and sect. 225 provides that in case of dispute the amount recoverable is to be ascertained, if under £50, by two justices, and if over £50 by arbitration under the Lands Clauses Act, 1845. By reason of the passing of the Acquisition of Land Act, 1919, the question of compensation comes within the provisions of that Act, the tribunal being the official arbitrator.

Under the provisions of the Metropolis Management (Thames River (Prevention of Floods)) Amendment Act, 1879, the London County Council and the City and borough councils have powers to take land for the purpose of preventing floods. The tribunal to decide upon the amount of compensation is a standing arbitrator, and special provisions are to be found in the Act as to his appointment. As the land is acquired by a local authority the question may arise as to whether his place has not been taken by the official arbitrator.

A number of special statutes have been passed authorising the London County Council to acquire land for various purposes, and the compensation payable on compulsory acquisition will be determined by the official arbitrator.

The Local Government Act, 1894: *Acquisition of Land by Parish Councils.*

Under the provisions of sect. 9 of this Act, parish councils are enabled to purchase by agreement land required for certain purposes referred to in the Act. If a parish council, however, are unable to acquire suitable land by agreement and on reasonable terms, they may represent the case to the county council, and the county council shall enquire into the representation. Statutory rules have been made relating to compulsory purchase of land by parish councils, and are dated and numbered 1922, No. 69, and 1927, No. 401. In these rules will be found the procedure to be adopted.

Gas and Water Companies.

Gas and water companies acquire their rights to interfere with streets and highways for the purpose of laying pipes by means of special Acts. These Acts will be found to contain powers of compulsory purchase for the purpose of the undertaking, and every gas company Act is deemed to incorporate the Gas Clauses Act, 1847, and every water company Act is deemed to incorporate the Waterworks Act, 1847.

If compulsory powers to take land are not required the gas or water undertaking can proceed by way of provisional order confirmed by Parliament. In such order the Gas or Waterworks Clauses Acts are incorporated respectively.

CHAPTER XV.

COMPULSORY ACQUISITION OF LAND UNDER THE TOWN PLANNING ACT, 1925.

Local authority may, under the Act, purchase by agreement or be authorised by order to purchase compulsorily land for purposes of town planning schemes—Provisions of Third Schedule, Part I., of Town Planning Act, 1925, as to compulsory purchase—Public enquiry if order objected to—Restrictions on acquisition of land, Third Schedule, Part II.—Claim by person whose property is injuriously affected by making of town planning scheme—Limitations to right to compensation, sect. 10—Tribunal to assess compensation—Official arbitrator under Acquisition of Land Act, 1919—Effect of Town Planning Rules, 1926, No. 439/L. 9—Rule 2 (1)—Right of local authority to withdraw or modify scheme under certain circumstances—Sect. 16, acquisition of land compulsorily for garden cities and town planning purposes by Minister of Health.

Town Planning Act, 1925.

THE authority responsible for enforcing the observance of a town planning scheme and for the execution of any works which, under the scheme or under the Town Planning Act, are to be executed by a local authority, may, for the purpose of a town planning scheme, purchase any land comprised in such scheme by agreement, or be allowed to purchase any such land compulsorily.

Local authority may purchase by agreement, or be allowed to purchase compulsorily, land for execution of works under a town planning scheme.

The manner in which the responsible authority may be authorised to purchase land compulsorily for the said purposes is by means of an order submitted to the Minister of Health and confirmed by him in accordance with the provisions of the first part of the Third Schedule of the Act.

Order submitted to and confirmed by Minister of Health.

When land included within the area of a local authority is comprised in a town planning scheme, and the local authority is not the responsible authority, the local autho-

rity may be authorised to purchase that land in the same manner as the responsible authority.

Power of purchase subject to the restrictions contained in Schedule III., Part II., of Town Planning Act, 1925.

The powers of acquiring land under the Act are subject to the restrictions contained in Part II. of the Third Schedule to the Act.

The first part of the Third Schedule contains the following provisions as to the compulsory acquisition of land:—

Town Planning Act, 1925, Part I., Schedule III. Provision as to compulsory acquisition of land.

1. Where a local authority propose to purchase land compulsorily, the local authority may submit to the Minister an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

2. An order under this schedule shall be of no force unless and until it is confirmed by the Minister of Health, and the Minister may confirm the order either without modification or subject to such modifications as he thinks fit, and an order when so confirmed shall, save as otherwise expressly provided by this schedule, become final and have effect as if enacted in this Act ; and the confirmation by the Minister shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

3. The order shall be in the form prescribed by the Minister, and shall contain such provisions as the Minister may prescribe for the purpose of carrying the order into effect, and of protecting the local authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations—

(a) the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845), as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919 ; and

(b) sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845.

[N.B.—Sect. 127 of the Lands Clauses Act, 1845, relates to the sale of superfluous lands, and is excepted from incorporation. Sects. 77 to 85 of the Railways Clauses Consolidation Act, 1845, relate to mines and minerals, the effect of incorporation of these sections being that the local authority will not be entitled to the mining right under any land purchased unless they have been expressly named in the conveyance and conveyed to them thereby, but must pay compensation for injury done to mines. These sections should be referred to if mines are affected by such compulsory purchase.]

4. The order shall be published by the local authority in the manner prescribed by the Minister, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed by the Minister.

Public enquiry if order objected to.

5. If within such period as may be prescribed by the Minister no objection to the order has been presented to the Minister by a person interested in the land, or if every such objection has been withdrawn, the Minister shall, without further inquiry, confirm the order, unless he is of opinion that the land is unsuited for the purpose for which it is proposed to be acquired, but, if such an objection has been presented and has not been withdrawn, the Minister shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local authority and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry, and the Minister shall, before confirming the order, duly consider the report of the person by whom a public inquiry is held.

6. In construing for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.

[At the public inquiry held in pursuance of provision 5, the object of the draft order is explained either by the clerk to the local authority or solicitor or counsel representing such authority. Evidence is called in support of the order, and those opposing it, can be heard in person or be legally represented.]

7. Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

8. The reference to sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, shall be construed as a reference to those sections as originally enacted and not as a reference to the provisions which by virtue of the Mines (Working Facilities and Support) Act, 1923, are in certain cases to be substituted for those sections.

The provisions referred to in the 1923 Act are only applicable to railways.

Town Planning Act, 1925, Part II. of Schedule III.

Part II. of Schedule III. is as follows:—

RESTRICTIONS ON ACQUISITION OF LAND.

Restrictions on acquisition of land.

1. Nothing in this Act shall authorise the acquisition for the purposes of any town planning scheme of any land

which is the site of an ancient monument or other object of archæological interest.

2. Nothing in this Act shall authorise the compulsory acquisition of any land which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking, or which at the date of the order authorising the compulsory acquisition of the land, forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any house.

[It will be noted in provision 2 that land forming part of any park, garden or pleasure ground, or which is otherwise required for the amenity or convenience of any house, cannot be acquired compulsorily. This provision should be remembered when a local authority is considering what they will require to purchase compulsorily. It may be necessary to serve notice to treat in respect of a house as well as the garden, although the authority only require the garden or a small portion of it. The garden can however be purchased by agreement.]

3.—(1) Where any scheme or order under this Act authorises the acquisition or appropriation of any land forming part of any common, open space, or allotment, the scheme or order, so far as it relates to the acquisition or appropriation of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the scheme or order provides for giving in exchange for such land other land, not being less in area, certified by the Minister after consultation with the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

(2) Before giving any such certificate the Minister shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make

representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any such scheme or order authorises such an exchange, the scheme or order shall provide for vesting the land given in exchange in the persons in whom the common or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Part of this Schedule the expression "common" includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

Claim by person whose property is injuriously affected by making of a town planning scheme.

Under sect. 10 of the Town Planning Act, 1925, any person whose property is injuriously affected by the making of a town planning scheme, is entitled to obtain compensation in respect thereof, from the responsible authority, if he makes a claim for the purpose within the time (if any) given by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by regulations made by the Minister of Health. The period usually given by the scheme within which a claim must be made is twelve months.

Limits to compensation for injurious affection.

There are certain limitations to such a person's right to claim compensation. Sect. 10, also enacts that a person is not entitled to obtain compensation on account of any building erected on, or contract made, or other thing done with respect to, land included in a scheme, (a) after the

date of the resolution of the local authority to prepare or adopt the scheme (see sect. 2 (1) (a) and (b)), or (b) after the date when such resolution takes effect, see sect. 2 (1) (i), or (c) after the date when the Minister has authorised a scheme to be made by virtue of any power conferred on him for that purpose by the Town Planning Act, 1925 (as the case may be, see sect. 1, (2)), or (d) in cases where before the 31st July, 1919, the preparation or adoption of a town planning order was authorised, after the date on which the application for authority to prepare or adopt the scheme was made, or after such other time as the Minister may fix for the purpose.

Prior to 31st July, 1919, the date upon which the Housing and Town Planning, &c. Act, 1919, came into operation, it was necessary for a local authority to obtain the authority of the local government board, to prepare or adopt a town planning scheme, but by reason of the passing of the latter Act now repealed, but re-enacted by the 1925 Act, the local authority can decide by resolution to prepare a town planning scheme or to adopt with or without modification any town planning scheme prepared by all or any of the owners of any land with respect to which the local authority are themselves by statute authorised to prepare a scheme.

The last limitation as to compensation, set out above, refers to schemes which may have been authorised prior to the coming into force of the Housing and Town Planning Act, 1919.

Compensation can, however, be obtained—

(a) in respect of any work done before the date of the approval of the scheme, for the purpose of finishing a building begun or of carrying out a contract entered into before such date or other time before mentioned. Sect. 10 (2) (a).

(b) In respect of any building erected, or contract made or other thing done in accordance with a permission granted in pursuance of an order of the Minister allowing Sect. 10 (2) (b).

the development of estates and building operations to proceed pending the preparation under the Town Planning Act, adoption or making and approval of the scheme, and the carrying out of work so permitted, does not prejudice any claim of any person to compensation in respect of property injuriously affected by the making of the scheme.

Sect. 10 (2) (c).

(c) After any enactment providing for the registration of local land charges comes into force, any purchaser of land affected by a town planning scheme will not be subject to the limitations as to compensation referred to in sect. 10 if the resolution of the local authority ought to have been registered as a local land charge and was not in fact registered. A purchaser would ordinarily make a search for any land charge against the land he has purchased, and it would not be just to bind him in respect of a limitation on the user of his land unless he had the opportunity of previously obtaining notice of the charge on his proposed purchase of land.

In the case of *Forsey and Hollebone Contract*, 25 L. G. R. 442, it was held by the Court of Appeal that the effect of the passing by a local authority of a resolution to prepare a town planning scheme, which is afterwards registered as a local land charge, is not to create an incumbrance or restriction upon any property included in the area to be subject to the scheme, and a purchaser who has contracted to buy such property free from incumbrances cannot, therefore, take any objection to title on that ground. It is a mere potential interference with the land which can be compensated for, unless the owner develops or builds on the land after the date of the passing of the resolution without a permission granted in pursuance of an order of the Minister of Health under the Act, in which case the right to compensation is excluded. But even if the resolution were an incumbrance, it is an incumbrance of which the purchaser is given notice under sect. 198 of the Law of Property Act, 1925, which precludes him from taking objection to it.

Tribunal to assess compensation under the Acquisition of Land Act, 1919.

The Town Planning Act, 1925, provides for betterment in the following terms, sect. 10, sub-sect. (3), enacting that where by the making of any town planning scheme any property is increased in value, the responsible authority can make a claim for the purpose within the time (if any) limited by the scheme (not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the Minister), and shall be entitled to recover from any person whose property is so increased in value (the time generally allowed by the scheme is twelve months), one half of the amount of that increase. Any question as to whether any property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalment or otherwise) of the sum which is to be paid as compensation under this section or which the responsible authority are entitled to recover from a person whose property is increased in value, is to be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, unless the parties agree on some other method of determination.

Effect of Town Planning Rules, 1926, No. 439, L. 9.

On 31st March, 1926, the Reference Committee for England and Wales constituted under the Acquisition of Land (Assessment of Compensation) Act, 1919, as extended by sect. 10 of the Town Planning Act, 1925, made rules dealing with the determination of questions as to compensation. The rules are entitled Town Planning, England, S. R. and O. 1926, No. 439, L. 9. Rule 2 (1), provides that the expression "Question" in Rule 2, of the Acquisition of Land Rules, 1919, shall include any question which by virtue of sect. 10 of the Town Planning Act, 1925, is to be determined by arbitration under and in accordance with the Acquisition of Land Act, 1919. Rule 2 of the Acquisition of Land

Rules referred to, contains the definition of the expression "Question" as meaning any question of disputed compensation, or any question of apportionment of a rent, which is to be referred to or determined by arbitration in manner provided by the Acquisition of Land Act, 1919.

Rule 2 (2) of the Town Planning Rules referred to above provides that in the application of the Rules of 1919, to a question relating to compensation under a town planning scheme, references in those rules to "the acquiring authority," and to "the claimant" shall respectively mean the responsible authority mentioned in sect. 10 of the Town Planning Act, 1925, and the person whose property is alleged to have been injuriously affected or increased in value by the scheme and by, or against whom, a claim has been made under that section, and the expression "claim" shall mean a claim under that section. A special form of application for the selection of an arbitrator is contained in the Schedule to the Rules.

Sum awarded as compensation may be recovered summarily.

Any sum due as compensation to a person aggrieved, from a responsible authority or to a responsible authority from a person whose property is increased in value, may be recovered summarily as a civil debt. If a town planning scheme has been revoked by an order of the Minister, any person who has incurred expenditure for the purpose of complying with the scheme is entitled to compensation in so far as any such expenditure has been rendered abortive by reason of the scheme (Town Planning Act, 1925, s. 10 (6)).

It is provided by sect. 11 (1) that where property is said to be injuriously affected by reason of any provisions contained in a town planning scheme no compensation will be paid in respect thereof, if or so far as the provisions are also contained in any public, general or local Act or order having the force of an Act of Parliament in force

in the area, or are such as would have been enforceable if they had been contained in bye-laws made by the local authority.

Again property is not to be considered injuriously affected by reason of the making of any provisions inserted in a town planning scheme which prescribes the space about buildings or limited number of buildings to be erected, or prescribes the height or character of building and which the Minister, having regard to the nature and situation of the land affected by the provisions, considers reasonable for the purposes.

The case of *In re Ellis and the Ruislip, Northwood Urban District Council*, (1920) 1 K. B. 343, was one involving a town planning scheme, the claimant, Mr. Ellis, claiming compensation from the district council in respect of property of which he was the owner, and which he alleged had been injuriously affected by the making of a town planning scheme. (Sect. 59, sub-sects. (1) and (2), of the Town Planning Act, 1909, which was at that time applicable to the scheme, were repealed by and re-enacted by sect. 11, sub-sects. (1) and (2), of the Town Planning Act, 1925.) The town planning scheme contained a clause prescribing a building line beyond which no buildings should be erected. The claimant was thereby deprived of the use for building purposes of a strip of land and claimed compensation. It was held by the Court of Appeal that—(1) The clause prescribing a building line was not a provision which prescribed the space about buildings within the meaning of sub-sect. (2), and that therefore the claim was not barred by that sub-section. (2) That the claim was not barred by sub-sect. (1), because the local authority had no express power to make a building line, and could not justify the clause as an exercise of their power to make a bye-law regulating the space about buildings. Bankes, L. J., also considered the claim was not barred, because there was no evidence that a bye-law having the same effect as the clause would be reasonable.

A local authority can now, by virtue of sect. 33 of the Public Health Act, 1925, fix an improvement line beyond which no new building can be placed, under the conditions laid down by that section, and upon payment of compensation to any persons whose property is injuriously affected by the prescribing of the improvement line.

If a person is entitled to compensation under the Town Planning Acts in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any Act other than the Town Planning Act, he is not entitled to compensation in respect of that matter or thing both under the Town Planning Act and under that other Act, and is not entitled to any greater compensation under the Town Planning Act than he would be entitled to under the other Act.

Town Planning Act, s. 12.

Right of local authority to withdraw or modify scheme.

Under sect. 12, if the responsible authority does not feel justified in paying the sum awarded as compensation in respect of property injuriously affected by the making of a town planning scheme, they can at any time within one month after the date of the award of compensation give notice to the owner of that property of their intention to withdraw or modify all or any of the provisions of the scheme which gave rise to the claim for compensation, and where such notice has been given, the responsible authority must, within three months of the date of the notice, submit for the Minister of Health's approval a varying scheme, carrying into effect such withdrawal or modification, and upon approval by the Minister of the varying scheme, whether with or without modification, and payment by the authority of the owner's costs of and in connection with the arbitration, the award of the arbitrator is discharged, without prejudice, however, to the right of the owner to make a further claim for compensation in respect of the said scheme as varied.

No award of compensation in respect of property injuriously affected by the making of a town planning scheme is capable of being enforced within one month from the date of the award, or if notice has been given by

the authority withdrawing or modifying provisions of the scheme, pending the Minister's decision on the varying scheme.

Town Planning Act, 1925, s. 16.

Acquisition of land for garden cities or town planning scheme by the Minister of Health.

Under the provisions of sect. 16 of the Town Planning Act, 1925, the Minister of Health may acquire land either by agreement or compulsorily for the purpose of garden cities, or land in regard to which a town planning scheme may be made. Certain conditions, however, must exist before the Minister can exercise his power.

He must be satisfied that a local authority (including a county council), or two or more local authorities jointly, or an authorised association, are prepared to purchase and develop the land for the purpose aforesaid, and that the public authority or an authorised association have funds available for such purchase and development. The Minister of Health must consult with the Board of Trade, the Minister of Agriculture and Fisheries, and the Minister of Transport, and if after such consultation he thinks fit, can acquire land on behalf of the authority or association for the purpose of securing the development of the land, and may do all things as may be necessary to vest the land so acquired in the local authority or association. The consent of the Treasury, however, must be obtained.

The provisions of the Town Planning Act relating to the power of a local authority to acquire land for the purpose of a town planning scheme apply for the purpose of the acquisition of land by the Minister, and the Minister in exercising his powers of acquiring land for the purposes already referred to, is subject to the same conditions as are applicable to the acquisition of land under the Town Planning Act by a local authority. In other words, the provisions in the First Schedule to the Act apply to compulsory acquisition by the Minister. In the case, however, of an order for the compulsory acquisition of land on behalf of an authorised association (Town Planning Act, 1925, s. 16 (5)), as distinct from acqui-

sition by the Minister on behalf of a local authority, the order must be laid before each House of Parliament, and is not to be confirmed by the Minister unless and until both Houses by resolution have approved the order, nor, if any modifications are agreed to by both Houses, otherwise than as so modified.

The local authority has power to acquire land for the purpose of a scheme approved by the Minister under sect. 16, and to develop any land so acquired in accordance with the scheme.

Unless the parties come to an agreement as to what is the right price to be paid for land taken compulsorily for the purpose of a town planning scheme, the matter is decided under the provisions of the Acquisition of Land Act, 1919, before an official arbitrator, and any questions as to whether any property is injuriously affected or increased in value by reason of the making of a town planning scheme are decided under the Acquisition of Land Act, 1919, unless the parties agree on some other method of determination.

CHAPTER XVI.

COMPULSORY ACQUISITION OF LAND UNDER THE SMALL HOLDINGS AND ALLOTMENTS ACTS.

Small Holdings and Allotments Act, 1908—Compulsory purchase by local authority—Compulsory hiring—Compensation—Acquisition of Land Act, 1919—Costs—Small Holdings and Allotments Act, 1926—Power of county councils to acquire compulsorily land for small holdings—Consent of Ministry necessary if loss may occur to council—Small Holdings and Allotments Act, 1926, s. 17 (3), as to effect of Acquisition of Land Act, 1919.

Sects. 1 to 22 of the Small Holdings and Allotments Act, 1908, which provided for small holdings have been repealed by the Small Holdings and Allotments Act, 1926, but sect. 25 (1) of the 1908 Act enacts that:—

Small Holdings and Allotments Act, 1908.

Compulsory purchase.

> If a council are unable to acquire by agreement and on reasonable terms suitable land for the purpose of allotments they may acquire land compulsorily in accordance with the provision of that Act relating to compulsory acquisition of land.

It was held in *Woodford Land and Building Co., Ltd.* v. *Woodford U. D. C.*, 19 L. G. R. 559, that the council are *primâ facie* the judges as to what land is suitable, and as to whether they can acquire it at a reasonable price within the ambits of the statute.

Sect. 39, sub-sect. (1), of the Act enacts that where a council propose to purchase land compulsorily, the council may, subject to the provisions of Part I. of the First Schedule to the Act, submit to the Minister of Agricul-

ture and Fisheries (*a*) an order putting in force, as respects the land specified in the order, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

Compulsory hiring.

Sub-sect. (2) provides that where a council propose to hire land compulsorily, an order for the compulsorily hiring of land for a period of not less than fourteen nor more than thirty-five years may be submitted to the Minister of Agriculture, and the provisions of Part I. of the First Schedule apply, as it applies to an order for compulsory purchase of land, with the substitution of "hiring" for "purchase" and with the modifications set out in Part II. of the Schedule.

Before the order can be put into force it must be confirmed by the Minister.

Compensation.

Sub-sect. (5) enacts that in determining the amount of any disputed compensation, no additional allowance is to be made on account of the purchase or hiring being compulsory.

Withdrawal of notice to treat on certain grounds.

Sub-sect. (8) enacts that if, after the determination of the amount of the compensation (including, in the case of land hired compulsorily, the rent) to be paid to any person in respect of his interest in the land proposed to be compulsorily acquired, it appears to the council that the land cannot be let for small holdings or allotments, as the case may be, at such a rent as will secure the council from loss, the council may at any time within six weeks after the determination of the amount by notice in writing withdraw any notice to treat served on that person or on any other person interested in the land, and in such case any person on whom such a notice of withdrawal has been served shall be entitled to obtain from the council compensation for any loss or expenses which he may have

(*a*) Under sect. 1 (1) of the Ministry of Agriculture and Fisheries Act, 1919, the Minister of Agriculture and Fisheries was substituted for the Board of Agriculture and Fisheries, the first Minister being appointed 9th January, 1920.

sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal, and the amount of such compensation is to be settled (in default of agreement) by arbitration.

Certain restrictions on the compulsory acquisition of land are contained in sect. 41 of the 1908 Act, which, after stating that the council in making, and the Minister in confirming, the order for compulsory acquisition of the land, must not take an undue or inconvenient quantity of land from any particular owner, enacts that no holding of fifty acres or less in extent, nor any part of such holding, shall be authorised to be acquired compulsorily for the purposes of small holdings or allotments. These restrictions, however, must be read subject to the provisions of sect. 16 of the Land Settlement (Facilities) Act, 1919, as amended by the Second Schedule of the Small Holdings and Allotments Act, 1926.

Sect. 16 as amended reads as follows:—

Land Settlement (Facilities) Act, 1919, s. 16.

(1) An order under the Small Holdings and Allotments Act, 1908, may, notwithstanding anything in section 41 thereof, authorise the compulsory acquisition—

(a) of any land which at the date of the order forms part of any park or of any home farm attached to and usually occupied with the mansion house, if the land is not required for the amenity or convenience of the mansion house;

(b) of a holding of fifty acres or less in extent or any part of such holding.

(2) Where it is proposed to acquire any land forming part of a park or any such home farm, or, except where required for the purposes of allotments, a holding of fifty acres or less in extent or of an annual value not exceeding fifty pounds for the purposes of income tax, or any part of such a holding, the order authorising the acquisition of the land shall not be

valid unless confirmed by the Minister of Agriculture.

(3) A holding to which the preceding subsection applies shall not in whole or in part be compulsorily acquired under the 1908 Act by a council where it is shown to the satisfaction of the council that the holding is the principal means of livelihood of the occupier thereof, except where the occupier is a tenant and consents to the acquisition.

Part I. and Part II., Schedule I., to Small Holdings and Allotments Act, 1908, must be read subject to provision of Acquisition of Land Act, 1919, see sects. 1 (1) and 7 (2) of that Act.

Part I. of the First Schedule to the Small Holdings and Allotments Act, 1908, contains provisions relating to the compulsory purchase of lands under the Act, and Part I. and Part II. of the Schedule apply to land which is hired compulsorily, but the provisions of both parts of the Schedule must be read subject to the provisions of the Acquisition of Land Act, 1919. (See sects. 1 (1) and 7 (2) of the Act.)

Paragraph 5 of Part I. of the First Schedule provides that the arbitrator shall, so far as practicable in assessing compensation, act on his own knowledge and experience, but subject as aforesaid. At any enquiry or arbitration held under the Schedule, the person holding the enquiry or arbitration shall hear by themselves or their agents any authorities or parties authorised by or under the Act to appear, and shall hear witnesses, but shall not, except in such cases as the Minister otherwise directs, hear counsel or expert witnesses.

Small Holdings and Allotments Act, 1908, Schedule I., Part I., paragraph 6. Scale of costs.

Paragraph 6 of the first part of the First Schedule provides that the Minister may make rules fixing a scale of costs to be applicable on an arbitration under the Schedule, and an arbitrator under this Schedule may, notwithstanding anything in the Lands Clauses Act, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily.

Acquisition of Land Act, 1919, s. 7, sub-s. 2.

Sect. 7, sub-sect. (2), of the Acquisition of Land Act, 1919, enacts that the provisions of that Act shall apply to the determination of the amount of rent or compensation payable in respect of land authorised to be hired compulsorily under the Small Holdings and Allotments Act, 1908, or any Act amending that Act, and any matter required to be determined by a valuer appointed by the Minister of Agriculture and Fisheries shall be determined by an official arbitrator in accordance with that Act.

Rent or compensation payable for compulsory hiring.

Small Holdings and Allotments Act, 1926.

The Small Holdings and Allotments Act, 1926, s. 4, enacts that—"For the purpose of providing small holdings for persons who desire to buy or lease, and will themselves cultivate the holdings and are able to cultivate them properly, a county council may purchase or take on lease land (whether situate within or without the country) by an agreement, or if the council are unable to obtain on agreement and on reasonable terms suitable land for the purpose, may purchase or take on lease such land compulsorily, in accordance with the provisions of the Small Holdings and Allotments Act, 1908, relating to the compulsory acquisition of land, providing that the county council shall not acquire land for such purpose as aforesaid without the consent of the Minister of Agriculture and Fisheries, unless the council are satisfied that the transaction will not involve any loss to the council, and where land is so acquired without the consent of the Minister, it shall not be lawful for the Minister to make or undertake to make any contribution under the provisions of the Act towards the costs of the acquisition of land, provided also that the county council, before acquiring any land outside the county, shall consult with the council of the county in which the land is situate."

Power of county council to purchase or lease land.

Consent of Minister necessary if loss may occur to council.

Small Holdings and Allotments Act, 1926, s. 17 (3).

Sect. 17 (3) of the Small Holdings and Allotments Act, 1926, states that for removing doubts as to the effect of the Acquisition of Land Act, 1919, it is declared—

(a) Acquisition of Land Act, 1919,

(a) That the said Act does not apply to the determination of a dispute as to the amount of com-

does not apply to dispute as to compensation payable on withdrawal of notice to treat under sect. 39 (8), Small Holdings and Allotments Act, 1908.

pensation payable on the withdrawal of a notice to treat under sub-sect. (8) of sect. 39 of the Small Holdings and Allotments Act, 1908. (See page 186.)

(b) Paragraphs 5 and 6 of Part I., of Schedule I. Small Holdings and Allotments Act, 1908, apply to cases before official arbitrators.

(b) That the said Act has not affected the power of the Minister, under paragraphs 5 and 6 of Part I. of the First Schedule to the Small Holdings and Allotments Act, 1908 (see page 99), to give directions with respect to hearing of counsel or expert witnesses, and of fixing scales of costs, and that any direction so given and scales so fixed apply to arbitration before an official arbitrator both when assessing the compensation in the case of the compulsory purchase of land, and when assessing the rent or other compensation to be paid in the case of the compulsory hiring of land.

CHAPTER XVII.

COMPULSORY ACQUISITION OF LAND UNDER THE HOUSING ACT, 1925.

Provisions of Part I. of Housing Act, 1925—Power of local authorities to acquire houses closed by a closing order—Land included in reconstruction scheme on account of sanitary condition—Obstructive buildings—Compensation—Arbitration—Rules as to, in First Schedule, Part II. and Part III.—Tribunal, official arbitrator—Housing Act, 1925, Part II.—Provisions as to improvement and reconstruction schemes—Official representation as to area by medical officer of health—Duty of local authority to make scheme for improvement of unhealthy area and to make reconstruction schemes—Requisites for reconstruction schemes—Confirmation of scheme by Minister of Health—Provisions as to—Case, *Rex* v. *Minister of Health, Ex parte Davis*—Provisions as to costs—Extinction of rights of way and other easements—Provisions as to compensation, sect. 46—Rules of compensation applicable to lands included for "efficiency," Schedule I., Part I.—Provisions as to licensed premises—Housing Act, 1925, Part III.—Provision of houses for the working classes—Compulsory purchase of land—Schedule III.—Restrictions on acquisition of certain lands—Power of entry on land acquired.

Housing Act, 1925, Part I.

The Housing Act, 1925, has consolidated all the enactments relating to the housing of the working classes in England and Wales, and came into force on 9th April, 1925.

Under the provisions of Part I. of the Act, in order to secure the repair, maintenance, and sanitary conditions of houses, the local authority can serve a notice on the owner of a house requiring him to execute certain works specified in the notice, in order to make the house in all respects reasonably fit for human habitation.

Sect. 4. Power of local authorities to acquire houses closed by a closing order.

By sect. 4, if the said house is not capable without reconstruction of being rendered in all respects reasonably fit for human habitation, and a closing order under sect. 11 has in consequence been deemed to have become operative in respect thereof, the Minister of Health may, on the application of the local authority, make an order authorising the authority to acquire the house, and thereupon the Act shall apply as if the house were land authorised to be acquired compulsorily for the purposes of a reconstruction scheme under Part II. of the Act, and *that land* had been *included in the scheme on account of the sanitary condition of the premises thereon.*

Land included in reconstruction scheme on account of sanitary condition.

The words "included in the scheme on account of the sanitary condition of the premises thereon" are of great importance, because, as will be seen later, such compulsorily acquired property becomes subject to a lower scale of compensation than would be paid if these words had been omitted.

Sect. 19. Power to local authority to order obstructive buildings to be pulled down.

Under the circumstances set forth in sect. 19 of the Act, the local authority may make an order directing that an obstructive building shall be pulled down, an "obstructive building" being one which a medical officer of health finds is (although not in itself unfit for human habitation) so situate that, by reason of its proximity to or contact with any other buildings, it (a) stops or interferes with ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation, or dangerous or injurious to health, or (b) prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings.

Sect. 20 (1). Compensation for pulling down obstructive buildings. Sect. 20 (2).

Under sect. 20 (1), the local authority is authorised to purchase the land on which the obstructive building is erected, in like manner as if they had been authorised by a special Act to purchase the same. By sub-sect. (2), for the purpose of such purchase, the powers of the Lands Clauses Acts with respect to the purchase and taking of

land otherwise than by agreement are to be deemed to be incorporated in Part I. of the Act (subject to the provisions of Part I. of the Act), and for the purpose of the provisions of those Acts (the Lands Clauses Acts), Part I. of the Act is deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order authorising the purchase, or if it is appealed against, after the date of the confirmation of the order by the Minister of Health.

Under sect. 20, sub-sect. (3), the owner of the land may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building. Sect. 20 (3).

Under sub-sect. (4), the amount of compensation to be paid on the purchase of any lands under this section, or for the pulling down of an obstructive building, shall in case of difference be settled by arbitration, and shall be apportioned by the arbitrator between any persons having an interest in the compensation in such manner as the arbitrator may determine. Sect. 20 (4).

By sub-sect. (5), where the local authority is empowered to purchase land compulsorily, it is not competent for the owner of a house or other building or manufactory to insist on his entire holding being taken where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or other building or manufactory without material detriment thereto, provided that compensation Sect. 20 (5).

may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part.

Housing Act, 1925, Schedule I., Part II, 5.

The arbitration referred to in sect. 20 (4) will be before an official arbitrator under the Acquisition of Land Act, 1919. (See Housing Act, 1925, First Schedule, Part II., 5.)

The effect of sub-sect. (5) is to except sect. 92 of the Lands Clauses Act, 1845, from incorporation if severance can take place without material detriment to the part not taken.

By sect. 20 (6), where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are mentioned in sub-sect. (1) of sect. 19 of the Act, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of the obstructive building is to be deemed to be private improvement expenses incurred by the local authority in respect of the building, and the local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts, 1875 to 1907, relating to private improvement expenses and to private improvement rates shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.

Sub-sect. (7) provides that where the amount to be paid for compensation for the purchase of any land under this section or for the demolition of an obstructive building has been settled otherwise than by arbitration, the power of apportioning the compensation under sub-sect. (4) of

this section, or of apportioning any part of the compensation amongst other buildings under sub-sect. (6) of this section, may be exercised by an arbitrator appointed on the application of the local authority by the Minister for this special purpose:

Provided that, if the owner or occupier of any such other building feels aggrieved by the decision of such arbitrator as aforesaid by whom the appointment is made as to the amount apportioned to the building, the matter shall, on application for the purpose being made by such owner or occupier, be settled by two justices in manner provided by the Lands Clauses Acts in cases where the compensation claimed in respect of land does not exceed fifty pounds.

As to private improvements rates referred to in sect. 20 (6), see Public Health Act, 1875, ss. 213—215 and 218.

Sect. 20 (7) refers to cases where the amount to be paid as compensation by the local authority has been agreed, but the proportions to be paid to various parties interested, or the amount of the compensation to be contributed by the "other buildings" have not been agreed. A special arbitrator appointed by the Minister will arbitrate on these matters and not an official arbitrator. If, on the other hand, the value of the land upon which the obstructive building stands is not agreed, the whole matter of value and apportionment will be dealt with by an official arbitrator as provided in Schedule I., Parts II. and III., of the Housing Act, 1925.

Sect. 22 of the Lands Clauses Act, 1845, contains the provisions relating to the compensation being settled by two justices when the amount claimed is not more than £50.

Provisions as to arbitration.

By sect. 21 (1), it is provided that in all cases in which the amount of any compensation is, in pursuance of Part I. of the Act, to be settled by arbitration, the com-

pensation shall be assessed in accordance with the rules set out in Parts II. and III. of the First Schedule to the Act so far as applicable to the case.

(2) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of any building, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in the building to them, or as they may direct; and in default thereof, or if the owner fails to adduce a good title to the building to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.

The words "payment thereof in manner prescribed by the Lands Clauses Act" refer to the provisions as to payment into the bank contained in several sections of the Lands Clauses Act, 1845, where persons interested in the land are under disabilities or absent from the country, or cannot be found.

Provision as to site after building demolished.

Under the provisions of sect. 22, sub-sect. (2), where the land on which the obstructive building is erected is purchased by the local authority, they must pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this part of this Act, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by the obstructive building, and may, with the assent of the Minister, and upon such terms as the Minister may think expedient, sell such portion of the site as is not required for the purpose of carrying this part of this Act into effect.

(3) A local authority may, where they so think fit, dedicate any land acquired by them under the provisions

of this part of this Act relating to obstructive buildings as a highway or other public place.

The rules as to assessment of compensation set out in Part II. and Part III. of the First Schedule to the Act referred to in sect. 21 as governing cases coming within Part I. of the Act are as follows:—

FIRST SCHEDULE.

Rules as to Assessment of Compensation.

Part II.—Rules applicable in the case of the Purchase of Lands on which Obstructive Buildings are erected.

1. Evidence shall be receivable by the arbitrator to prove that the rental of the premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates, and, if the arbitrator is satisfied by such evidence, the compensation shall, so far as it is based on rental, be based on the rental which would have been obtainable if the premises were occupied for legal purposes and only by the number of persons whom the premises were, under all the circumstances of the case, fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates.

2. Evidence shall be receivable by the arbitrator to prove that the premises are in a state of defective sanitation or are not in reasonably good repair, and if the arbitrator is satisfied by such evidence, the compensation shall be the amount estimated as the value of the premises if they had been put into a sanitary condition or into reasonaby good repair after deducting the estimated expense of putting them into such condition or repair.

The local authority may tender such evidence as aforesaid before the arbitrator, notwithstanding that they have not taken any steps with a view to remedying the defects or evils disclosed by the evidence.

3. The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the houses or buildings included in one or more order or orders made by the local authority; but he may, and, if the local authority request him so to do, shall, from time to time make an award respecting a portion only of the disputed cases brought before him.

4. The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other premises of the same owner by the demolition of the obstructive building.

5. Subject to the foregoing provisions the compensation to be paid shall be assessed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

PART III.—RULES APPLICABLE WHERE OBSTRUCTIVE BUILDINGS ARE PULLED DOWN, THE OWNER RETAINING THE SITE.

1. The estimate of the value of the house or building to be pulled down shall be based on the fair market value as estimated at the time of the valuation being made of the house or building and of the several interests therein, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state and to the state of repair thereof, and rules 1, 2, 3 and 4 of Part II. of this Schedule shall apply.

2. No allowance shall be made by reason of the pulling down being compulsory.

3. Subject to the foregoing provisions the compensation to be paid shall be assessed under the Acquisition of Land (Assessment of Compensation) Act, 1919, and the provisions of that Act other than section two thereof, shall apply accordingly, notwithstanding that no land is acquired compulsorily.

The Acquisition of Land Act, 1919, was intended to deal only with cases where land was compulsorily acquired by a Government department or local or public authorities, and the rules applicable providing the principles of compensation to such cases are found in sect. 2 of that Act.

Under Part II. of the Housing Act, 1925, provision is made for improvement and reconstruction schemes.

Duty of local authority to make scheme for improvement of unhealthy area.

By sect. 35 (1), where an official representation is made to a local authority as respects any area in the district of the authority either—

(a) that any houses, courts, or alleys within the area are unfit for human habitation; or

(b) that the narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses or groups of houses within the area, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defects, or one or more of such causes, are dangerous or injurious to the health of the inhabitants either of the buildings in the area or of the neighbouring buildings;

and that the most satisfactory method of dealing with the evils connected with such houses, courts, or alleys, and the sanitary defects in the area, is a scheme (hereinafter referred to as an improvement scheme) for the rearrangement and reconstruction of the streets and houses within the area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that the area is *an unhealthy area* and that an improvement scheme ought to be made in respect of the area, and after passing such a resolution they shall forthwith proceed to make a scheme for the improvement of the area.

(2) Any number of such areas may be included in one improvement scheme.

(3) The provisions of this Part of this Act relating to improvement schemes shall not apply to rural districts.

Official representations.

An official representation for the purposes of the preceding section is stated in sect. 36 to mean a representation made to the local authority by the medical officer of health of that authority, or in London made either by such officer or by any medical officer of health in London. And sect. 36 (2) provides that a medical officer of health shall make such a representation whenever he sees cause to make the same; and if any justice of the peace acting within the district, or any four or more local government electors in the district, complain to him of the unhealthiness of any area within such district, it shall be the duty of the medical officer of health forthwith to inspect the area and to make a report stating the facts of the case, and whether in his opinion the said area or any part thereof is or is not an unhealthy area, and if he considers the case one proper for making an official representation shall make such a representation.

Under the provisions of sect. 37, the local authority must make a reconstruction scheme in the following cases:—

Duty of local authority to make reconstruction schemes.

(a) Where an order for the demolition of a building has been made in pursuance of Part I. of this Act and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring houses if the area of which such building forms part were used for all or any of the following purposes:—

(i) dedicated as a highway or open space; or

(ii) appropriated, sold, or let for the erection of houses for the working classes; or

(iii) exchanged with other neighbouring land which is more suitable for the erection of such houses, and which on exchange will be appropriated, sold, or let for such erection.

(b) Where it appears to the local authority that the

closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the said buildings or of the neighbouring buildings, and that the most satisfactory method of dealing with the said evils is by the demolition or the reconstruction or rearrangement of the said buildings or of some of them, and that the area comprising those buildings and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with by an improvement scheme.

The local authority must pass a resolution to the above effect and direct the reconstruction scheme to be prepared for the improvement of the said area.

Sect. 38 provides the requisites for improvements and reconstruction schemes. The scheme must be accompanied by maps, particulars and estimates, and the following are the most important provisions from the point of view of compensation:—

Requisites for improvement and reconstruction schemes.

(1) An improvement or reconstruction scheme of a local authority shall be accompanied by maps, particulars and estimates, and—

(a) may exclude any part of the area in respect of which the resolution was passed or *include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient;* and

(b) may provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; and

(c) shall provide for proper sanitary arrangements; and

(d) may provide for any other matter (including the closing and diversion of highways) for which it

seems expedient to make provision with a view to the improvement of the area or the general efficiency of the scheme.

(2) The scheme shall distinguish the lands proposed to be taken compulsorily.

(4) Where by or in consequence of an improvement or reconstruction scheme, persons of the working classes in the area affected by the scheme will be displaced, the scheme shall, if the Minister so requires (but it shall not be otherwise obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of such persons so displaced, in suitable dwellings to be erected in such place or places either within, or without the limits of the same area as the Minister on a report made by the officer conducting the local enquiry thereinafter mentioned might require.

(5) A local authority may for the purpose of providing such accommodation (that is, for persons displaced by the scheme) appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

Having complied with certain provisions as to publication of advertisements and service of notices, the local authority presents a petition to the Minister of Health asking for an order confirming the scheme.

Sect. 40 provides the machinery for obtaining the confirmation of the order.

Sub-sect. (3) enacts that the Minister after considering the petition may cause a local enquiry to be held, and, if satisfied on the report thereon that the circumstances are such as to justify the making of the scheme and that the carrying into effect of the scheme either absolutely, or subject to conditions or modifications, would be beneficial to the health of the inhabitants of the area in question or of the neighbouring dwelling-houses, may by

order confirm the scheme with or without such conditions or modifications, so however that no addition shall be made to the lands proposed in the scheme to be taken compulsorily.

(4) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the land comprised in the area shall be acquired within three years after the date of the making of the order:

Provided that the amount of compensation shall, in case of difference, be settled by arbitration as hereinafter provided, and that the Lands Clauses Acts as so incorporated shall have effect subject to the provisions of the Second Schedule to this Act.

The public enquiry held under sect. 40 (3) is as to the benefit of the scheme, but is very often principally concerned in the question as to whether land is included in the scheme by reason of its sanitary condition or in order to make the scheme more efficient. As will be seen in sect. 46, the scale of compensation in the former case is the value of the land at the time the valuation is made as a site clear of buildings and available for development in accordance with the requirement of the building bye-laws at the time in force in the district. In the case, however, of land being included in the scheme, to make the scheme more efficient full compensation is given, subject to the rules contained in Part I. of the First Schedule to the Act. It has been sometimes stated that land has been placed in the former category although the buildings upon it were in good repair, and that successful businesses had been carried on on the premises taken, and no compensation for disturbance had been given. If such be the case, there appears to be grounds for complaint, but on 22nd May, 1928, the late Minister of Health stated, in answer to a question in the House of Commons, that

before confirming schemes he gave his careful consideration to the question as to whether any property in a scheme as submitted fell within the category of insanitary condition or dangerous to health. He further stated that when property not fairly within these classes is necessary for the effective laying out of the scheme, and is included in the scheme for that purpose, the compensation which is payable is on the basis of market value.

As to what an improvement scheme should contain, it was held by the Divisional Court and the Court of Appeal in *Rex* v. *The Minister of Health, Ex parte Davis*, 27 L. G. R. 89, and (1929) 1 K. B. 619, that an improvement scheme must contain provisions for the use of the land when acquired, and that a proposal to acquire sites in an area, leaving open the question of its subsequent user till after the Minister had given expression to the purpose for which it should be used, was not a scheme that complied with the Act. Further, that a statement in the document purporting to be a scheme, to the effect that the council would provide a number of dwellings for the working classes not exceeding seventy-two if the Minister of Health so required, did not fill in the necessary requirement of the Act to make the proposals into a good scheme. The Court granted a prohibition against the Minister, prohibiting him from considering the document submitted to him as a scheme.

Provision as to costs.

Under sect. 41 (1), the Minister may make such order as he thinks fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily, for the allowance of the reasonable costs, charges and expenses properly incurred by him in opposing such scheme.

It was stated by the late Minister of Health in 1928 that up to 1928 only two orders had been made under this sub-section.

(2) All costs, charges and expenses incurred by the Minister in relation to any order under the last preceding section shall, to such amount as the Minister thinks proper

to direct, and all costs, charges and expenses of any person to such amount as may be allowed to him by the Minister in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this part of this Act, and shall be paid to the Minister and to such person respectively in such manner and at such times and either in one sum or by instalments as the Minister may order, with power for the Minister to direct interest to be paid at such rate not exceeding five pounds per centum per annum as the Minister may determine, upon any sum for the time being due in respect of such costs, charges and expenses as aforesaid.

(3) Any order made by the Minister in pursuance of this section may be made a rule of the High Court, and be enforced accordingly.

The rights of tenants for less than a year are preserved by sect. 42 (7), which provides that where any premises or any part of any premises purchased by the local authority in pursuance of a scheme are not closed by a closing order, and are occupied by any tenant whose contract of tenancy is for less than a year, the local authority, if they require him to give up possession of such premises or part for the purpose of pulling down the premises, may make to the said tenant a reasonable allowance on account of his expenses in removing.

And under sect. 45, the following rights to compensation are given where any rights of way or other easements are interfered with.

"Upon the purchase by the local authority of any land required for the purpose of carrying into effect any improvement or reconstruction scheme under this Part of this Act, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall, save as hereinafter provided, be extinguished, and all the soil of such ways, and the property

in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919:

"Provided that any such scheme may, with the consent of the person or body of persons entitled to any such right or easement, provide for any exceptions, restrictions, or modifications in the application of this section to that right or easement, and this section shall take effect subject to any such exceptions, restrictions, or modifications."

The provisions as to compensation payable when land included in an improvement or reconstruction scheme is acquired compulsorily are contained in sect. 46 of the Act and Part I. of the First Schedule, and, as has already been stated, a distinction is drawn between that payable *in respect of land included in the scheme only for the purpose of making the scheme efficient, and land included in the scheme on account of the sanitary condition of the premises, or of those premises being dangerous or prejudicial to health.*

In the latter class of cases the compensation to be paid for the land, including any building on it, is the value at the time the valuation is made of the land as a site clear of buildings, and available for development in accordance with the requirement of the building bye-laws at the time being in force in the district.

It is also provided in the same section that if, in the opinion of the Minister, it is necessary that provision should be made by the scheme for the re-housing of persons of the working classes on the land or part thereof when cleared, or that the land or part thereof when cleared should be laid out as an open space, the compensation payable to all persons interested in any land included in the scheme (other than land included for the purpose of

making the scheme efficient) for their respective interests therein is to be reduced by an amount ascertained as follows:—

(a) the value of the whole of the land included in the scheme shall first be ascertained on the basis of its value as a cleared site available for development in accordance with the requirements of the building bye-laws in force in the district;

(b) the value of the whole of the said land shall next be ascertained on the basis of its value as a cleared site subject to the requirements of the scheme as to the provision to be made for the re-housing of persons of the working classes or the laying out of open spaces on the land or any part thereof;

(c) the difference between the amounts ascertained under paragraphs (a) and (b) shall then be computed;

(d) the amount by which the compensation payable for the respective interests in the land to which the foregoing provisions of this section apply, as ascertained in accordance with the principle laid down in those provisions, is to be reduced shall be a fraction thereof equal to the amount arrived at under paragraph (c) when divided by the amount arrived at under paragraph (a).

(2) Subject as aforesaid, the compensation to be paid for such land shall be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919.

It will be noted that in ascertaining the fraction to be deducted from each owner's compensation, the calculation is based upon the value of the whole of the land included in the scheme, and not the land of the particular claimant. Whether a property comes within this class of case depends upon whether the Minister, as a result of a public enquiry

held under sect. 40 of the Act, upholds the decision of the local authority to colour the premises pink on the plan submitted. So colouring the premises pink indicates that the area is "an unhealthy area," and there may be in that area houses or other buildings coloured blue, which indicates that they have been included in the area for the purpose of making the scheme more efficient, in which case full compensation is payable, in accordance with the rules contained in Schedule I. of the Act, Part I. This section, so far as it relates to compensation for land taken other than for purposes to make the scheme more efficient, has been acknowledged by the late Minister of Health to be unsatisfactory, and amending legislation was promised.

Sect. 46 (3) provides that in the case of land and premises included in an improvement or reconstruction scheme only for the purpose of making the scheme efficient, and not on account of the sanitary condition of the premises thereon, or of those premises being dangerous or prejudicial to health, the compensation to be paid shall be assessed in accordance with the rules contained in Part I. of the First Schedule to the Act.

Those rules are as follows:—

SCHEDULE I.

Part I.

Rules applicable in the case of Lands included in an Improvement or Reconstruction Scheme only for the purpose of making the Scheme efficient, and not on account of the Sanitary Condition of the Premises thereon or of those Premises being Dangerous or Prejudicial to Health.

1. Evidence shall be receivable by the arbitrator to prove that the rental of the premises was enhanced by reason of the same being used for illegal purposes, or being so overcrowded as to be dangerous or injurious to the health of the inmates, and, if the arbitrator is satisfied by such evidence, the compensation shall, so far as it is

based on rental, be based on the rental which would have been obtainable if the premises were occupied for legal purposes and only by the number of persons whom the premises were, under all the circumstances of the case, fitted to accommodate without such overcrowding.

2. Evidence shall be receivable by the arbitrator to prove that the premises are in a state of defective sanitation or are not in reasonably good repair, and if the arbitrator is satisfied by such evidence, the compensation shall be the amount estimated as the value of the premises if they had been put into a sanitary condition or reasonably good repair after deducting the estimated expense of putting them into such condition or repair.

The local authority may tender such evidence as aforesaid before the arbitrator, notwithstanding that they have not taken any steps with a view to remedying the defects or evils disclosed by the evidence.

3. The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other premises of the same owner by the alteration or demolition by the local authority of any buildings.

4. Subject to the foregoing provisions the compensation to be paid shall be assessed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

By sect. 47, provisions are made as to licensed premises included in improvement or reconstruction schemes in the following terms:—

Provisions as to licensed premises included in schemes.

47. Where the land included in an improvement or reconstruction scheme, whether made before or after the passing of this Act, comprises premises in respect of which an old on-licence is in force, the following provisions shall have effect—

(1) The local authority by whom the scheme is made may undertake that in the event of the renewal

of the licence being refused they will pay to the compensation authority towards the compensation payable on such refusal under the Licensing (Consolidation) Act, 1910, such contribution as may be specified in the undertaking, and any sum payable by the local authority in pursuance of such undertaking shall be treated as part of their expenses in carrying out the scheme:

(2) Where the local authority acquire the premises in pursuance of the scheme and the local authority intimate to the licensing justices that they are willing to surrender the licence, the licensing justices may refer the matter to the compensation authority, and that authority, on being satisfied that if the licence had not been surrendered it might properly have been dealt with as a redundant licence, or that when the proposed scheme had been carried out it would have become a licence which might have been so dealt with, shall contribute out of the compensation fund towards the compensation paid by the local authority in respect of the acquisition of the premises a sum not exceeding the compensation which would have been payable under the Licensing (Consolidation) Act, 1910, on the refusal of the renewal of the licence.

Apart from the provisions of the foregoing section no compensation is given for loss of a licence by reason of premises being taken for an improvement scheme. In the case of *Northwood* v. *London County Council*, (1926) 2 K. B. 411, it was held that where land upon which there was a fully licensed public-house was compulsorily acquired by the London County Council for the purpose of an improvement scheme under Part II. of the Housing of the Working Classes Act, 1890, that the official arbitrator, in assessing the compensation to be paid for the land and

premises under sect. 46 (1) of the Housing Act, 1925, was not entitled to award to the licensee any sum for trade disturbance or for the loss of his licence, or for the value of the trade fixtures. The land and the licensed house had been scheduled coloured pink on the plan. The Court also pointed out that under sect. 24 (2) (a) of the Licensing (Consolidation) Act, 1910, the licensee would be entitled to apply for a removal of his licence on the special ground that his premises were about to be pulled down in order that the land could be used for a public purpose.

Under sect. 64 of the Housing Act, 1925, a local authority may be authorised to purchase land compulsorily for the purposes of Part III. of the Act, which provides for houses for the working classes by means of an order submitted to the Minister and confirmed by him in accordance with the Third Schedule of the Act.

The Third Schedule to the Act is entitled "Provisions as to the Compulsory Acquisition of Land by a Local Authority for the purposes of Part III. of this Act," and those provisions are as follows:—

(1) Where a local authority propose to purchase land compulsorily, the local authority may submit to the Minister an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) An order under this schedule shall be of no force unless and until it is confirmed by the Minister, and the Minister may confirm the order either without modification or subject to such modifications as he thinks fit, and an order when so confirmed shall, save as otherwise expressly provided by this schedule, become final and have effect as if enacted in this Act; and the confirmation by the Minister shall be conclusive evidence that the requirements of this Act have been complied with, and that the

order has been duly made and is within the powers of this Act.

(3) The order shall be in the form prescribed by the Minister, and shall contain such provisions as the Minister may prescribe for the purpose of carrying the order into effect, and of protecting the local authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations—

(a) the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845) as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919; and

(b) sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845.

(4) The order shall be published by the local authority in the manner prescribed by the Minister, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed by the Minister.

(5) If within such period as may be prescribed by the Minister no objection to the order has been presented to the Minister by a person interested in the land, or if every such objection has been withdrawn, the Minister shall, without further enquiry, confirm the order unless he is of opinion that the land is unsuited for the purpose for which it is proposed to be acquired, but, if such an objection has been presented and has not been withdrawn, the Minister shall forthwith cause a public enquiry to be held in the locality in which the land is proposed to be acquired, and the local authority and all persons interested in the land and such other persons as the person holding the enquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the enquiry, and the Minister shall, before confirming the order, duly consider the report of the person by whom a public enquiry is held.

(6) In construing, for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act, together with the order, shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.

(7) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(8) The reference to sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, shall be construed as a reference to those sections as originally enacted and not as a reference to the provisions which by virtue of the Mines (Working Facilities and Support) Act, 1923, are in certain cases to be substituted for those sections.

A copy of an order submitted for approval to the Minister will be found on page 18.

Sect. 127 of the Lands Clauses Act, 1845, excepted from incorporation by provision 3, refers to sale of superfluous lands.

Sects. 77 to 85 of the Railways Clauses Consolidation Act, 1845 (which are incorporated), contain certain provisions as to mines of slate or other mineral under any land purchased by a railway company.

Finally, there are certain restrictions on acquisition of certain lands, to be found in sects. 103, 104 and 105 of the Housing Act, 1925, and under sect. 106, special provisions are conferred on local authorities enabling them

to enter upon land without the consent of the owner. These sections are set out hereunder.

Restriction on acquisition of certain lands.

103.—(1) Where any scheme or order under this Act authorises the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment, the scheme or order, so far as it relates to the acquisition or appropriation of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the scheme or order provides for giving in exchange for such land other land, not being less in area, certified by the Minister after consultation with the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

(2) Before giving any such certificate, the Minister shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any such scheme or order authorises such an exchange, the scheme or order shall provide for vesting the land given in exchange in the persons in whom the common or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel

allotment or a field garden allotment under an Inclosure Act.

Provisions as to land in neighbourhood of royal palaces or parks.

104.—(1) Where any land proposed to be included in any scheme or order to be made under this Act, or any land proposed to be acquired under this Act, is situate within the prescribed distance from any of the royal palaces or parks, the local authority shall, before preparing the scheme or order or acquiring the land, communicate with the Commissioners of Works, and the Minister shall, before confirming the scheme or order or authorising the acquisition of the land or the raising of any loan for the purpose, take into consideration any recommendations they may have received from the Commissioners of Works with reference to the proposal.

(2) For the purposes of this section "prescribed" means prescribed by regulations made by the Minister after consultation with the Commissioners of Works.

Saving of sites of ancient monuments, &c.

105. Nothing in this Act shall authorise the acquisition for the purposes of this Act of any land which is the site of an ancient monument or other object of archaeological interest.

Power of entry on land acquired.

106.—(1) Where a local authority are by an order confirming a scheme under Part II. of this Act, or by an order made and confirmed under Part III. of this Act, authorised to purchase land compulsorily for the purposes of the scheme or of Part III. of this Act, then, at any time after notice to treat has been served, the local authority may, after giving to the owner and occupier of the land such notice as is hereinafter mentioned, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845, but subject to the payment of the like compensation for the land of which possession is taken, and interest on the compensation awarded, as would have been payable if those provisions had been complied with.

(2) Where a local authority have agreed to purchase land for the purposes of a scheme under Part II. of this Act or for the purposes of Part III. of this Act, or have determined to appropriate land for either of those purposes, subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year or from year to year, then, at any time after such agreement has been made, or such appropriation has been approved by the Minister, the local authority may, after giving to the person so in possession such notice as is hereinafter mentioned, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent, but subject to the payment to the person so in possession of the like compensation, with such interest thereon as aforesaid, as if the local authority had been authorised to purchase the land compulsorily and such person had in pursuance of such power been required to quit possession before the expiration of his term or interest in the land, but without the necessity of compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845.

(3) The length of notice required to be given under the foregoing provisions of this section shall—

(a) in the case of land purchased for the purposes of a scheme under Part II. of this Act, be not less than twenty-eight days; and

(b) in the case of land purchased for the purposes of Part III. of this Act, be not less than fourteen days.

CHAPTER XVIII.

ENFORCEMENT OF ASSESSMENT, REMITTING AND SETTING ASIDE AWARDS.

Under-sheriff to give judgment—Conveyance must be tendered by owner before enforcement of judgment—Action on judgment—If jury exceed their jurisdiction, *certiorari* lies—Procedure—Enforcing award of arbitrators—Summons to High Court asking leave to enforce award as a judgment—Annual Practice—Arbitration Act, 1889, s. 12—Action for specific performance after award—Defences to such action—Remitting award to arbitrator—Grounds for remitting—Practice as to remitting by motion to Divisional Court—Setting aside award—Grounds for practice.

I.—*Enforcement of Assessment of Compensation.*

Under-sheriff to give judgment after verdict.

When a jury has awarded a sum to the claimant in respect of purchase-money or compensation, the under-sheriff before whom the enquiry was held must give judgment for the purchase-money or compensation so assessed and the verdict and judgment is signed by the under-sheriff, and having been signed is kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part of them are situated, in respect of which such purchase-money or compensation shall have been awarded. Such verdict and judgment are deemed records, and the same or true copies of them are good evidence in all Courts. (Sect. 50 of the Lands Clauses Act, 1845.)

Judgment in terms of verdict.

The judgment must be in the terms given by the jury. (*R.* v. *West Riding of Yorkshire Junction* (1834), 3 L. J. M. C. 117.) Before a judgment for the purchase-

money can be enforced, the vendor must tender a conveyance to the promoters or acquiring authority. (*Howell* v. *Metropolitan District Railway Co.*, 19 Ch. D. 508.) In *Chapman* v. *Monmouth Railway and Land Co.* (1857), 27 L. J. Ex. 97, it was held that the finding of a sheriff's jury in an enquiry held under sect. 68 of the Lands Clauses Act, 1845, is not conclusive, and that in an action brought on a judgment of the sheriff it is competent for the defendant to say that the plaintiff's property was not damaged or injuriously affected within the meaning of the Lands Clauses Act, 1845, and that he is not entitled to compensation, and to prove in support of such contention that the subject-matters are not within sect. 68. In *Read* v. *Victoria Station and Pimlico Railway Co.*, 32 L. J. Exch. 167, it was held that the defendant in such an action, on the judgment of the under-sheriff, can raise as a defence to the action that the lands and the plaintiff's interests therein were not damaged and injuriously affected.

Action brought on judgment.

If the jury exceeds its jurisdiction and includes in its verdict compensation not allowed in law, the proper procedure for the promoters to adopt is to apply for a writ of *certiorari* to remove the inquisition, verdict and judgment upon the grounds of excess of jurisdiction with a view to the verdict being quashed. (*Cowper Essex* v. *Local Board for Acton*, 14 A. C. 155.)

Certiorari if jury exceed jurisdiction.

Want of jurisdiction cannot be pleaded by way of defence to an action to enforce the judgment of the under-sheriff. (*Metropolitan Board of Works* v. *Howard*, 5 T. L. R. 732; *Long Eaton Recreation Grounds* v. *Midland Railway*, (1902) 2 K. B. 574.)

Application for a writ of *certiorari* is a writ on the Crown side, and must be applied for to a Divisional Court of the King's Bench Division dealing with Crown matters. It must be applied for promptly, and in order to obtain a rule *nisi* the application must be supported by an affidavit setting forth particulars of the case and

Procedure for writ of *certiorari*.

the grounds upon which the rule is asked for. The application must be made by counsel, and the rule *nisi* is obtained on an *ex parte* application. The claimant must then show cause why the rule should not be made absolute, the case being entered by the promoters in the Crown paper. The exact procedure to be adopted will be found in the Crown Office Rules, 1906, under the heading "*Certiorari*." Two counsel will be heard on either side. If the rule is made absolute the inquisition, verdict and judgment are brought up, and either quashed entirely or, if the claimant is willing, the verdict is corrected by the omission of such part of the verdict as has been found to exceed the jurisdiction of the jury. If the whole of the verdict and judgment is quashed, a fresh jury can be summoned to assess compensation afresh on the old warrant. (*Horrocks* v. *Metropolitan Railway* (1865), 19 C. B. (N. S.) 139.)

Verdict may be quashed in whole or in part.

II.—*Enforcing the Award of Arbitrators.*

Having obtained the award of an official arbitrator or an arbitrator appointed by agreement between the parties the award can be enforced.

1. If no question arises as to the right of the claimant to receive compensation or liability on the part of the promoters to pay compensation, the award may be enforced by the taking out of an originating summons in the King's Bench Division or the Chancery Division of the High Court asking the leave of the Court or a judge to allow the award to be enforced in the same manner as a judgment or order to the same effect. It is usual to commence the proceedings in the King's Bench Division.

Summons to High Court asking leave to enforce award as a judgment.

The detailed procedure will be found in the note to sect. 12 of the Arbitration Act, 1889, in the Annual Practice, Part V., Div. 11.

Note in Annual Practice on Arbitration Act, 1889, s. 12.

An appeal lies from the judge in chambers either refusing or granting an order to enforce an award direct to the Court of Appeal (*Re Colman and Watson's Arbitration,* (1908) 1 K. B. 47), it being a matter of "practice and procedure" within the meaning of sect. 31 (3) of the Supreme Court of Judicature (Consolidation) Act, 1925. (See *Simbro Trading Co., Ltd.* v. *Poso-graph Patent Corporation,* (1929) W. N. 154.)

Action of specific performance.

2. If the claimant's title may be in question or any other legal point may arise as to the claimant's right to receive compensation, the claimant should enforce the award by means of an action for specific performance of the award in the Chancery Division. (*Re Boks & Co. and Peters, Rushton & Co.'s Arbitration,* (1919) 1 K. B. 491.) In *Harding* v. *Metropolitan Railway Co.*, 7 Ch. Ap. 154, it was held that a railway company, after notice to treat of land has been given to the landowner and the price of land has been fixed by arbitration under the Lands Clauses Act, 1845, is in the same position with regard to the landowner as an ordinary purchaser, and will be compelled by a Court of Equity to complete his purchase. The price having been ascertained, all the elements of a complete agreement are present, and a bargain then exists, made under legislative enactment between the railway company and those over whom they are authorised to exercise their power.

If no question of title arises the promoters are compelled to take a conveyance, and in case of difference the conveyance must be settled by the Court. (*In re Cary Elwes' Contract,* (1906) 2 Ch. 143.)

Defence to action that arbitration and award is *ultra vires.*

It is a good defence to an action for specific performance that the arbitration and award are *ultra vires* on the ground that the arbitrator has been appointed under the provisions of the wrong Act, and has assessed compensation under that Act. (*L. N. W. Railway* v. *Walker,* (1903) A. C. 289.)

Sect. 35 of the Lands Clauses Act, 1845, states that it is the duty of the promoters to take up the award, and if the promoters refuse to do so a writ of mandamus can be applied for on behalf of the claimant to compel the promoters to fulfil their obligation under the said section (*R.* v. *L. & N. W. Railway,* (1894) 2 Q. B. 512), in which case Wright, J., said, at p. 518: "We have no doubt that the practice which has been inveterate for years of enforcing the taking up of these awards under the Lands Clauses Act by a prerogative writ of mandamus is the proper remedy." The practice as to the issue of a prerogative writ of mandamus is governed by the Crown Office Rules, 1906, rr. 49—68, for which see Short and Mellor's Crown Office Practice.

Lands Clauses Act, 1845, s. 35.

Mandamus to compel promoters to take up award.

The period within which an action may be brought to enforce an award of compensation made by an arbitrator under the Lands Clauses Act, 1845, is six years from the date of the award. (*Turner* v. *Midland Railway Co.*, (1911) 1 K. B. 832.)

III.—*Remitting to Arbitrator.*

Sect. 10 of the Arbitration Act, 1889, enacts that in all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire, and that when the award is remitted the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

Arbitration Act, 1889, s. 10.

Remitting award to arbitrators.

In the arbitration between *Montgomery, Jones & Co. and Liebenthal & Co.*, 78 L. T. 406, Chitty, L. J., stated that there were four grounds upon which a matter could be remitted to an arbitrator for reconsideration.

1. Where the award is bad on the face of it.

2. Where there has been misconduct on the part of the arbitrator.

Four grounds for remitting award.

3. Where there has been an admitted mistake and the arbitrator himself asks that the matter may be remitted.

4. Where additional evidence has been discovered after the making of the award.

He further added that he could find no other ground upon which a Court would act under sect. 10.

Burnard v. *Wainwright,* 19 L. J. Q. B. 423, and *Keightley, Maxted & Co. and Bryan, Durant & Co.*, (1893) 1 Q. B. 405, were cases in which awards were remitted by reason of material evidence having been discovered since the arbitration which might have affected the arbitrator's decision. If there is any uncertainty as to the terms of the award as to costs, the Court would send the matter back if asked to do so (*Re Fearon and Flynn*, L. R. 5 C. P. 34), or if the arbitrators omit to award cost of reference. (*Becker & Co. and Barry Bros.*, (1921) 1 K. B. 591.) When an arbitrator has made his award he is *functus officio*, but the Court can still remit his award back to him. (*Stringer and Riley Bros.*, (1901) 1 Q. B. 105.)

Practice as to remitting award.

The practice as to obtaining the remitting of an award is by motion on behalf of the aggrieved party to the Divisional Court in the King's Bench Division. If it is desired to apply to a Chancery judge it must be made to him in Court. A Master has jurisdiction to remit, but the practice is as stated.

IV.—*Setting aside an Award.*

Lands Clauses Act, 1845, s. 35.

No award to be set aside for irregularity or error in matter of form.

Arbitration Act, 1889, s. 11 (2).

Grounds for setting aside an award.

Sect. 35 of the Lands Clauses Act, 1845, enacts that no award made with respect to any question referred to arbitration under the provisions of that Act, or the special Act, can be set aside for irregularity or error in matter of form, but under sect. 11 (2) of the Arbitration Act, 1889, where an arbitrator or umpire misconducts himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

What is misconduct on the part of arbitrator.

Examples of misconduct.

Legal decisions as to what amounts to misconduct on the part of an arbitrator are very numerous, and include many cases which do not involve the arbitrator in any moral turpitude at all. A few examples only can be given here. It is misconduct if the award is uncertain or ambiguous, or if the arbitrator fails to give notice to the parties of the day of hearing. (*Osward* v. *Grey*, 24 L. J. Q. B. 69.) In *Sutherland & Co.* v. *Hennevig Bros., Ltd.*, (1921) 1 K. B. 336, an arbitrator having issued his award stated that he had made a mistake in writing his award in the matter of provision as to costs, and proceeded to amend the same and issued another award. It was held that the second award must be set aside, as the arbitrator had not merely made an error arising from an accidental slip or omission within the meaning of sect. 7 (c) of the Arbitration Act, 1880, and that he could not correct his award under the powers conferred by that section, inasmuch as what he had done was to assume jurisdiction to expound his award. In *W. Ramsden, Ltd.* v. *Jacobs*, (1922) 1 K. B. 640, an award was set aside on the ground that the arbitrators heard evidence of one party in the absence of the other party. In *Fischel* v. *Mann and Cook*, (1919) 2 K. B. 431, the buyers under a contract which was the subject of an arbitration moved to set aside the award on the ground of misconduct of the umpire in failing to state a case, and in other respects. It was held that the umpire, in disregarding the request of the buyers to state a case, and in making his award otherwise than in the form of a special case, had been guilty of misconduct which was more than merely technical, and that the Court, in its discretion, should set the award aside. In *Government of Kelantan and Duff Development Co., Ltd.*, (1923) A. C. 395, it was held that where a question of construction is specifically referred to arbitration, the decision of the arbitrator on that point cannot be set aside because the Court would have come to a different conclusion, unless it appears on the face of the

award that the arbitrator has proceeded illegally; for example, that he has decided on evidence which is inadmissible, or on principles of construction which the law does not countenance. The expression of Channell, J., in the case of *In re King and Duveen,* (1913) 2 K. B. 35, 36, was quoted with approval by Lord Parmoor, namely: "It is equally clear that if a specific question of law is submitted to an arbitrator for his decision and he does decide it, the fact that the decision is erroneous does not make the award bad on its face so as to permit of its being set aside, otherwise it would be futile ever to submit a question of law to an arbitrator."

The practice as to setting aside an award is by notice before the Divisional Court of the King's Bench Division. The notice of motion, together with any affidavit to be used at the hearing, must be served at least two clear days before the day named for hearing, and within six weeks after the award has been made and published to the parties. The notice of motion must state the grounds of the application. (Rules of the Supreme Court, Ord. LII. r. 4.)

CHAPTER XIX.

MISCELLANEOUS PROVISIONS.

Promoters and rates—Housing Act, 1925, s. 131—Rating and Valuation Act, 1925, s. 2 (7)—Services of notices—Lands Clauses Act, 1845, s. 134—Tender of amends—Lands taken by agreement—Intersected lands—Omitted interests in lands—Lands purchased for extraordinary purposes—Access to special Act.

CERTAIN sections of the Lands Clauses Act, 1845, have not been already referred to, but as they are of importance they must be considered.

Promoters and Rates.

Lands Clauses Act, 1845, s. 133.

Land tax and poor rate to be paid by promoters.

By sect. 133, if the promoters become possessed of any land charged with the land tax or liable to be assessed to the poor rate, they shall, until the works shall be completed and assessed to land tax or poor rate, be liable to make good any deficiency in the several assessments by reason of such land having been taken and used for the purposes of the works, and the deficiency is to be computed according to the rental at which such land and buildings were valued at the time of the passing of the special Act.

Land tax may be redeemed.

If at any time the promoters think fit to redeem such land tax, they may do so according to the powers given by the Act for the redemption of land tax.

Housing Act, 1925, s. 131.

This section does not apply to cases where lands are acquired under the Housing Act, 1925. (See sect. 131 of that Act.)

Rating and Valuation Act, 1925, s. 2 (7).

With reference to the provisions of sect. 133, sect. 2 (7) of the Rating and Valuation Act, 1925, enacts that "section 133 of the Lands Clauses Consolidation Act, 1845, shall have effect as though for the references therein to the poor rate, there were substituted references to the general rate, and as though the amount required to be made good by the promoters of the undertaking were, in the case of lands situate in an urban rating area, one-half of the deficiency in the several assessments to the general rate.

"The assessment on which any payment made by promoters under the said section is based shall be inserted in the valuation list, and any such payment shall be taken into account for the purpose of ascertaining the proceeds of any rate."

This section, however, does not apply to the administrative County of London. (See Rating and Valuation Act, 1925, s. 70.)

In 1874, when the parish was the rating authority for levying the poor rate, it was held in the *East London Railway and James Whitechurch*, L. R. 7 H. L. 81, that when the portion of a railway being constructed in a particular parish had been completed, the deficiency rate in that parish was no longer payable. If, therefore, a portion of a railway is being constructed in a rating area created by the Rating and Valuation Act, 1925, it is submitted that when that part of the railway being constructed in that area is completed, the deficiency rate is no longer payable.

Service of Notices.

Lands Clauses Act, 1845, s. 134. Service of notices.

Under sect. 134 of the Lands Clauses Act, 1845, any summons or notice, or any writ or other proceedings at law or equity requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the

principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary, the solicitor of the said promoters.

Tender of Amends.

Tender of amends.

Under sect. 135 of the Lands Clauses Act, 1845, if any party shall have committed any irregularity, trespass or other wrongful proceeding in the execution of the Lands Clauses Act, 1845, and special Act, the party committing the wrongful act may tender amends, and if no amends have been tendered the party committing the wrongful act may, by leave of the Court, where action is pending, pay into Court such moneys as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

Lands taken by Agreement.

Lands taken by agreement.

The cases dealt with in this work are those in which power to acquire land compulsorily has been obtained, and the parties have not agreed upon the amount to be paid as purchase-money or compensation. It is provided by sect. 6, however, that it shall be lawful for the promoters to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of the special Act, and with all parties having any estate or interest in such land, or by the Lands Clauses Act, 1845, or special Act, enabled to sell and convey the same, for the absolute purchase, for a consideration in money of any such lands or part thereof. In such cases sects. 6 to 15 of the Lands Clauses Act, 1845, apply.

Sect. 7 makes it lawful for certain persons under disability to sell and convey and to enter into all necessary agreements for that purpose. A statutory company must contract under its seal.

Sect. 15 enacts that no municipal corporation shall sell for the purposes of the special Act, without the approba-

tion of the Local Government Board, now the Minister of Health, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of the Lands Clauses Act, 1845, or the special Act, empowered to purchase or take compulsorily. (*Arnold* v. *Gravesend*, 25 L. J. Ch. 776.)

Intersected Lands.

Intersected lands.

Sometimes lands belonging to one owner are cut through and divided. Under such circumstances sect. 93 provides that if any lands not being situate in a town or built upon are so cut through and divided by the works as to leave either on both sides or one side thereof a less quantity of land than half a statute acre, the owner may require the promoter to purchase the less quantity of land along with the other land, and the promoters must purchase the same, unless the owner has other land adjoining to that so left, into which the same can be thrown so as to be conveniently occupied therewith.

Under sect. 94 the promoters of the undertaking may insist on purchasing the smaller portion if the expense of putting a communicating bridge between the two pieces of land is greater than the value of the smaller piece of land.

The value of the land or the expense of putting the said bridge between the pieces of land is to be settled in case of difference by a jury or arbitrators under the Act.

Omitted interests in Land.

Omitted interests in land.

Sects. 124—126 provide for cases where promoters enter upon land and have, owing to mistake or inadvertence, failed or omitted to purchase or pay compensation for any estate right or interest or charge affecting such lands. In such cases, whether the period allowed for the purchase of lands shall have expired or not, the promoters may remain

in the undisturbed possession of such lands, provided within six months after notice of such right, interest or charge, in case the same shall not be disputed by the promoters or in case the same shall be disputed, then within six months after the right thereto has been established by law in favour of the party claiming the same, the promoters shall purchase or pay compensation for the same, and also mesne profit or interest for the period between the entry and the time of payment or purchase-money or compensation.

In estimating such compensation or mesne profit the jury, arbitrators or justices shall assess the same according to what they shall find to have been the value of such lands, estate or interest and profits at the time such lands were entered upon by the promoters and without regard to any improvement or works made in the said lands by the promoters, and as though the works had not been constructed.

In addition to the purchase-money, compensation or satisfaction, the promoters must pay the costs occasioned by the litigation which has arisen by reason of the promoters having entered upon the land by such mistake or inadvertence.

The period of six months referred to in the above sections means six months after a final decision has been given in favour of the claimants to right in the land. (*Caledonian Railway Co.* v. *Davidson and Others*, (1903) A. C. 22.)

Lands Purchased for Extraordinary Purposes.

Lands purchased for extraordinary purposes.

It is the general rule that lands can only be acquired compulsorily for the purpose of the authorised undertaking, but under sect. 45 of the Railways Clauses Act, 1845, a railway company may contract with any party willing to sell the same for the purchase of any land adjoining or near to a railway not exceeding in the whole the prescribed number of acres for extraordinary purposes. The

number of acres so permitted to be acquired by agreement will be specified in the special railway Act. The following are the extraordinary purposes stated in the said section:—

For the purpose of making and providing additional stations, yards, wharfs and places for the accommodation of passengers, and for receiving, depositing and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses and other buildings and conveniences; and for the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

Power to purchase land required for additional accommodation.

Sect. 12 of the Lands Clauses Act, 1845, enacts that in case the promoters of the undertaking are empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who are enabled by the Act to sell and convey lands, to sell and convey the land so authorised to be purchased for extraordinary purposes.

Authority to sell and repurchase such lands.

Under sect. 13 of the Lands Clauses Act, 1845, the promoters can sell the lands they have so acquired for extraordinary purposes for such consideration as they think fit, and again purchase other lands for the like purposes, and afterwards sell the same, but the total quantity of land to be held at any one time by the promoters must not exceed the prescribed quantity.

Sect. 14 of the Lands Clauses Act, 1845, prohibits the promoters from purchasing more than the prescribed quantity of lands for extraordinary purposes from any party under legal disability.

The lands authorised to be acquired by agreement for extraordinary purposes do not become superfluous lands if unused, and therefore the provisions of the Lands Clauses Act, 1845, relating to superfluous lands do not apply to

such lands. (*City of Glasgow Union Railway Co.* v. *Caledonian Railway Co.*, L. R. 2 Sc. and Div. App. 160.)

Access to Special Act.

Access to special Act.

The statutory company are under statutory obligations, under sect. 150 of the Lands Clauses Act, 1845, to keep a copy of their special Act at their principal office of business, and allow the same to be inspected by all persons interested, and to make extracts or copies therefrom. The company are under certain penalties if they fail to fulfil their obligations in these respects.

CHAPTER XX.

PAYMENT OF COMPENSATION INTO COURT AND TAKING MONIES OUT OF COURT.

Sections of Lands Clauses Act, 1845, under which payment may be made into Court—Practice as to payment into Court—Rules of the Supreme Court, Ord. XXII. r. 1—Supreme Court Funds Rules, 1927—Rule 30—Forms 14-22—Note in the Annual Practice as to payment into Court under the Lands Clauses Act, 1845—Title of account—Form 15 of the Supreme Court Funds Rules, 1927—Payment of money out of Court—Rules of the Supreme Court, Ord. LV. r. 2 (1)—Note in Annual Practice giving procedure as to payment out of Court—After deposit of compensation in Court, if owner fails to show good title, promoters may execute a deed poll.

Payment into Court.

Payment into Court.

SEVERAL sections of the Lands Clauses Act, 1845, provide for payment into Court of the purchase-money awarded in respect of land compulsorily acquired, and in respect of the compensation awarded for injurious affection, and by payment into Court is meant payment into the Bank of England upon a direction for lodgment given by the Accountant-General.

The sections are 69, 71, 73, 76, 85, 107, 109, 113 and 117.

Lands Clauses Act, 1845, s. 69.

Sect. 69 provides that if purchase-money or compensation payable in respect of land, or interest thereon, purchased or taken from certain parties under disability, amounts to £200 or over, it shall be paid into the Bank of England and applied to certain purposes named in the section.

Sect. 71 provides that where such purchase-money or compensation does not amount to £200, but exceeds £20, the same may be paid into the bank, or the same may be paid to two trustees nominated by the parties entitled to the rents and profits of the land. Lands Clauses Act, 1845, s. 71.

Sect. 73 provides that all sums of money exceeding £20 payable by promoters in respect of the taking, using or interfering with any land under a contract or agreement with any person who shall not be entitled to dispose of such land, or of the interest therein, contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid. Lands Clauses Act, 1845, s. 73.

By sect. 76, it is provided that if parties refuse to convey, or do not show title, or cannot be found, the promoters may deposit the purchase-money or compensation payable in respect of the land into the bank. Lands Clauses Act, 1845, s. 76.

Under sect. 85, if the promoters desire to enter upon and use the land before an agreement shall have been come to, or an award made, or verdict given for the purchase-money or compensation, the promoters must deposit in the bank by way of security, either the amount of the purchase-money or compensation claimed by any party interested and who shall not consent to the entry, or a sum determined by a surveyor appointed by two justices in the manner provided by the Act. The payment into the bank must include 5 per cent. on the money paid in as purchase-money or compensation, from the date of entry upon such land to the date the money is deposited in the bank or paid to the party entitled. Lands Clauses Act, 1845, s. 85.

Sect. 107 provides for payment into the bank of compensation payable to commoners, where no committee has been appointed to receive the money on behalf of the commoners. Lands Clauses Act, 1845, s. 107.

Sect. 109 provides for the deposit in the bank of the purchase-money and interest due under a mortgage of land taken, where any mortgagee fails to convey or release his Lands Clauses Act, 1845, s. 109.

interest in such mortgage as directed by the promoters, or if he fails to adduce a good title.

Lands Clauses Act, 1845, ss. 111 and 113.

Sects. 111 and 113 also provide for payments into the bank in respect of interests in mortgage debts.

Lands Clauses Act, 1845, s. 117.

Sect. 117 deals with land subject to rent-charges, and provides for payment into the bank of compensation where the party entitled to the benefit of the rent-charges refuses to release the land of the charge.

Practice as to payment into Court.

Supreme Court Funds Rules, 1927.

The practice as to payment of funds into Court, and procuring payment out of Court, will be found in Orders of the Supreme Court and the Supreme Court Funds Rules, 1927, copies of which are to be found in the Annual Practice (White book) or the Yearly Practice (the Red book). All payments into Court in the Chancery Division are made at the Bank of England, Law Courts Branch, on a direction for lodgment. (Rules of the Supreme Court, Ord. XXII. r. 1.)

R. S. C., Ord. XXII. r. 1.

Supreme Court Funds Rules, 1927, r. 30.

Rule 30 of the Supreme Court Funds Rules, 1927, provides that in the case of money lodged in Court in the Chancery Division, directions for lodgment shall be issued by the Accountant-General, and (1) (a), (b) and (c) of that rule provides for lodgment under an order, the Life Assurance Companies (Payment into Court) Act, 1896, and the Trustee Act, 1925, respectively. (1) (d) provides that if lodgment is made under conditions other than those mentioned, the Accountant-General gives directions for lodgment upon receipt of the request appropriate to the circumstances under which the money is to be lodged.

Forms 14 to 22 inclusive, in the Appendix to the said rules, apply to cases under (1) (d).

A valuable note to the above rule will be found in Part III. of the Annual Practice, and a part of that note is here quoted.

Note in Annual Practice to rule 30, S. C. F. Rules, 1927.

"*Lodgment under 'Lands Clauses Act*, 1845,' *special Act*.—A King's printer's copy of the special Act should be produced, which will be retained by the Pay Office. (See Form 15.)

"Sects. 69, 71, 76, 85 and 86 of the Act provide for the larger number of lodgments in Court. Sects. 73, 107, 109, 111, 113 and 117 also provide for lodgment in Court, but are rarely acted upon."

Title of the account.

"*As to Title of the Account.*—See *Drake* v. *Greaves*, 33 C. D. 609. Where funds are lodged in Court to a credit which sufficiently expresses the interests of the parties, it is not necessary, upon an application for investment, to carry over the fund to a new credit."

The following is a copy of Form 15 applicable to cash lodgment under the Lands Clauses Act, 1845. The said form is referred to in Rule 30 (1) (d) of the Supreme Court Funds Rules, 1927, set forth above, and will be found in the Appendix to the Supreme Court Funds Rules, 1927, in Part III. of the White Book.

I.—*Request for Direction for Lodgment.*

In the High Court of Justice, Chancery Division.

*Ledger Credit.**

Folio .

The Accountant-General is hereby requested to issue a direction to the bank to receive from the sum of £ lodged pursuant to section of the Lands Clauses (Consolidation) Act, 1845, and (the special Act).

Signature

Date . Address

*The following are specimen ledger credits set forth in the Appendix to the Supreme Court Rules, 1927, under Form 15:—

If lodged under sect. 69 *or* 71—

Ex parte the Promoters of the Undertaking (naming them).

In the matter of the special Act, 19 .

The vendor being (*add words expressive of disability*).

In the case of a corporate or public body for *vendor* insert the *vendors* (The Mayor, &c., *as the case may be*).

If land is not taken but compensation is payable for permanent damage, in place of the word vendor say "In respect of lands belonging to, &c."

If lodged under sect. 76—

Ex parte the (Promoters of the Undertaking).

The account of A. B. in respect of land situate at and numbered on the deposited plan.

If lodged under sect. 86—

Ex parte the (Promoters of the Undertaking).

The account of A. B.

Marginal Notes.

If the powers for compulsory purchase have expired by lapse of time, the following words should be in the margin of the form:—

If lodged under sect. 76—"the sum to be lodged is the amount agreed to" *or* "the sum to be lodged is the amount of compensation awarded by the (valuer, stating how appointed and to whom the award is payable)."

If lodged under sect. 86—"No agreement has been come to, award made or verdict given, the amount to be lodged is the amount claimed" *or* "the amount determined by (a surveyor, stating how appointed)."

Payment out of Court.

Payment of money out of Court.

The money having been deposited in Court, applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or when the title depends only upon proof of the identity or the will, marriage or death of any person are disposed of by judges of the Chancery Division. (Rules of the Supreme Court, Ord. LV., r. 2 (1).) Where purchase-money payable to parties under disability amounting to £200 has been deposited in the bank under

sect. 69 of the Lands Clauses Act, 1845, the following note to the said order in the Annual Practice applies.

Note in Annual Practice to R. S. C., Ord. LV. r. 2 (1).

"*Lands Clauses Act, s.* 69—*Persons absolutely entitled within sect.* 69.—Where purchase-moneys of settled lands taken by a railway company have been paid into Court, trustees for sale of such lands are not, either under the Lands Clauses Act, s. 69, or the Settled Land Act, 1882, entitled as of right to payment out, but under the Settled Land Act the Court has a discretion to order such payment to trustees who are persons empowered to give an absolute discharge. (*Re Smith, Ex parte L. & N. W. Railway and Midland Railway,* 40 C. D. 386 (C. A.).)

"The borough of Kensington being owners in fee simple by virtue of the London Government Act, 1899, of land acquired by the Great Western Railway Co., the purchase-money of which had been paid into Court, applied for payment out as being 'persons absolutely entitled.' (Sect. 6 (5) of the London Government Act, 1899, provides that the proceeds of land sold by a borough council shall be applied in such manner as the Local Government Board shall sanction.) The Local Government Board refused its sanction to the payment out, and the Court of Appeal declined to make the order asked for (not following *Mayor, &c., of Woolwich,* (1908) W. N. 56; *G. W. Railway Co.,* (1909) W. N. 202.)

"Purchase-money which had remained in Court for fifty-nine years directed to be paid out to legal personal representatives of persons from whom the land had been purchased, no claim having ever been made by persons who might have had an interest in the land. (*Ex parte Burdett Coutts, Re Columbia Bethnal Green Market,* (1927) 2 Ch. 98.)

"*Lands Clauses Act, ss.* 85 *and* 87.—By direction of the judges of the Chancery Division given in February, 1907, application for payment out of moneys paid into Court under these sections may be made by summons whatever the amount.

"Any such summons asking for payment out to a person on behalf of a company should be sealed with the company's seal, by analogy to the practice on petitions. (*Ex parte Maidstone, &c., Railway Co.*, 25 C. D. 168.)

"Production of the bond and concurrence of the person whose name was in the account was considered sufficient evidence on which to obtain payment out of Court of money paid in under sect. 85 without proving that the persons to whom the land belonged had been paid. (*Ex parte Midland Railway,* (1904) 1 Ch. 61 (C. A.).) In 1907 the judges of the Chancery Division directed that, on the application for payment out, an affidavit should be produced (1) that a bond was given to the claimant and exhibiting it; (2) that the compensation money and interest (if any) have been paid to the claimant, or into Court; and (3) that the bond has been given up by the claimant to the company. Such direction would seem not to apply if the obligee of the bond joins in the application, and there is no person other than the applicants interested in the deposit.

"As to dispensing with service on landowners who have been compensated, of the application for payment out of deposit to the company. (See *Ex parte Lancashire and Yorkshire Railway,* 55 L. T. 58; *Ex parte Midland Railway,* (1894) W. N. 128.)"

Promoters may execute a deed poll if good title to land is not shown by owners.

When the purchase-money or compensation due to parties has been deposited in the bank, all parties by the Lands Clauses Act enabled to sell or convey the land must, when required so to do by the promoters, duly convey the land to the promoters or as they may direct; and in default, or if he fails to show a good title, the promoters may, if they think fit, execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the promoters or any two of them containing certain particulars, which will be found in sect. 75 of the Lands Clauses Act, 1845, and thereupon all estate and interest in the land vests absolutely in the promoters, and as

Lands Clauses Act, 1845, s. 75.

against such parties, and all parties on behalf of whom they are by the Act enabled to sell and to convey, the promoters shall be entitled to immediate possession of such land.

The procedure as to payment into Court and payment of money out of Court is not dealt with in any great detail in this chapter, because a practitioner will prefer to refer to the Annual Practice or the Yearly Practice for details of such procedure.

CHAPTER XXI.

SUPERFLUOUS LANDS.

Lands Clauses Act, 1845, s. 127—Period within which lands must be sold—What are superfluous lands?—Sect. 128, right of pre-emption—Meaning of "built upon"—Arbitration as to price.

THE power to acquire lands compulsorily is generally limited to such lands as are required for the purpose of "the undertaking," although under some special Acts of Parliament, promoters may be authorised to acquire land by agreement for purposes ancillary to the main purpose of their undertaking. (*A.-G.* v. *Frimley and Farnborough District Water Co.*, (1908) 1 Ch. 727.)

Lands Clauses Act, 1845, s. 127.

Superfluous lands to be sold within period prescribed by special Act or if no time prescribed within ten years.

Sect. 127 of the Lands Clauses Act, 1845, provides that with respect to lands acquired by the promoters of the undertaking under the powers of the Lands Clauses Act, 1845, or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, within the prescribed period, or if no period is prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands and apply the purchase-money arising from such sale to the purposes of the special Act, and in default thereof, all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto in proportion to the extent of their lands respectively adjoining the same.

"Superfluous land" means land acquired by the promoters of the undertaking, but not required for the purpose of the undertaking. In *Great Western Railway Co.* v. *May*, L. R. 7 H. L. 283, it was stated by Lord Cairns, L. C., that superfluous land might arise in four different ways: (1) Land originally taken under the compulsory powers, but taken upon a wrong estimate or calculation of the quantity of land which would be required for a purpose for which it is afterwards found out by experience, that less land than was originally supposed will be sufficient; or (2) it may be land which the railway company may have been forced to take by reason of wishing to take a part only of premises; or (3) land taken originally and required originally for the permanent works of the line, but which, in the course of subsequent years, turns out to have been occupied by works which are abandoned, and which, by reason of the abandonment of those works originally supposed to be permanent, became land no longer required by the company; or (4) land which has been allowed to be taken by the company, or which has been forced to be taken by the company for temporary purposes, and which has been taken by the company with the intention of its being used for temporary purposes, which temporary purposes have come to an end. In many special and public Acts sect. 127 is excepted from incorporation, for example, under the provision of the Housing Act, 1925, where a local authority propose to purchase land compulsorily, the local authority submits to the Minister of Health an order putting in force as respects the land specified in the order, the provisions of the Lands Clauses Act, 1845, with respect to the purchase and taking of land otherwise than by agreement.

What are superfluous lands?

Wrong estimate of lands required.

Obliged to take whole when part was sufficient.

Works abandoned on land taken.

Land taken for temporary purposes which have come to an end.

By paragraph (5) of the Third Schedule to the Housing Act, 1925, it is provided that the order shall be in the form prescribed by the Minister, and shall incorporate, subject to the necessary adaptation, *inter alia*, the Lands

Housing Act, 1925, Schedule 3 (5) excepts sect. 127 from incorporation in that Act.

Clauses Act (except sect. 127) as modified by the Acquisition of Land Act, 1919.

Town Planning Act, 1925, Schedule 1, excepts sect. 127 from incorporation.

There is a similar provision in the First Schedule to the Town Planning Act, 1925.

Right of pre-emption, sect. 128.

Land must be offered to original owners.

Under the provision of sect. 128 of the Lands Clauses Act, 1845, before the promoters of the undertaking dispose of any such superfluous lands, they must, unless such lands be situate within a town or be lands built upon or used for building purposes, first offer to sell the same to the person thus entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same or cannot be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold; and where more than one such person shall be entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another, in such order as the promoters shall think fit.

Meaning of words "built upon."

In *Lord Carington* v. *Wycombe Railway Co.*, L. R. 3 Ch. 377, it was stated by Lord Cairns, L. J., that the words "built upon" must mean to describe something which, though it cannot be called land in a town or part of a town, is land covered with continuous buildings *eodem modo*, as the *solum* of the town, and that the legislature could not have meant that because a piece of land in the open country had a building upon it, it was "land built upon" within the meaning of the section. What the Act of Parliament required in order to bring the case within the exception, would be, not that it should be capable of being used as building ground, but that it actually and *de facto* should be land used for building purposes.

Lands Clauses Act, 1845, s. 129.

Sect. 129 of the Lands Clauses Act, 1845, enacts that the persons who are entitled to a right of pre-emption must signify their desire to purchase the land within six weeks after the offer of sale has been made. If they decline such offer or neglect to signify their desire to

purchase such lands within the six weeks, the right of pre-emption of every such person ceases. If proof is required in a Court of law that the provisions of sects. 128 and 129 have been complied with, it will be sufficient evidence if a declaration in writing is made before a justice by some person not interested in the matter in question stating that such offer was made and was refused, or was not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country or could not after diligent enquiry be found, or were not capable of entering into a contract for the purchase of such lands.

Lands Clauses Act, 1845, s. 130.

Price for superfluous lands to be fixed by arbitration.

By sect. 130, the price to be paid by any person entitled to the right of pre-emption, who desires to purchase the lands, is to be ascertained (in default of agreement) by arbitration, and the costs of such arbitration are in the discretion of the arbitrator.

As this is a case of land being bought, not by the promoters, but by some party from the promoters, the arbitration provisions of the Lands Clauses Act, 1845, will not apply, but the arbitration will be conducted under the provisions of the Arbitration Act, 1889. (*Jones* v. *South Staffordshire Railway*, 19 L. T. 603.) In *Hooper* v. *Bourne* (1880), L. R. 5 A. C. 1, it was held that the burden of proof that land has become superfluous is upon the party claiming the right of pre-emption. If an undertaking is abandoned, the land becomes "superfluous" within the provisions of sect. 127. (*Astley* v. *Manchester, Staffordshire and Lincolnshire Railway*, 27 L. J. Ch. 478.) If accommodation works are constructed on the land taken, it does not become superfluous land. (*Beauchamp* (*Lord*) v. *G. W. Railway*, 3 Ch. Ap. 745.) In *Betts* v. *G. E. Railway Co.*, 49 L. J. Q. B. 197, it was held that lands acquired by a company under the Lands Clauses Act, 1845, and not sold or used for the purpose of the undertaking within the period specified

in sect. 127, are not superfluous lands within the section if, at the end of that period, there is a purpose within the private Act to answer which the land is retained in good faith by the company.

Owing to the increase of building along the routes of railways and the number of statutes authorising compulsory purchase, in which the provisions of sect. 127 of the Lands Clauses Act, 1845, are excepted from incorporation, the sections relating to superfluous lands and the right of pre-emption are of diminishing importance.

CHAPTER XXII.

COMPENSATION CASES.

The following are examples of claims for compensation made before an official arbitrator appointed under the Acquisition of Land Act, 1919, the particulars being derived from recent volumes of the "Estates Gazette's" Digest of Law and Arbitration Cases:—

I.—Parties.

Mr. F. W. Greswolde Williams - - - - Claimant.

Corporation of Newcastle-upon-Tyne - Acquiring Authority.

The properties taken were:—

(a) A block of office property known as Queen's Buildings.

(b) Prince's Buildings.

The properties were taken in connection with the construction of the new high level bridge over the River Tyne. The two cases were by consent taken separately.

(1) *Queen's Buildings.*

(a) *Valuations for claimant:—*

		£	s.	d.
Fair rental value..... (although existing rents were £1,378 : 16*s.* 0*d.*).	£2,530			
Capitalised net rental of £2,108 at 22½ years' purchase.....		47,430	0	0
Deducting therefrom for the balance of the terms of two outstanding leases ..		1,226	5	0
Total valuation ..		£46,203	15	0

(b) *Second valuation for claimant:—*

Based upon comparison with other properties in the neighbourhood.

Capital value of £60 per sq. yard .. £46,080

Valuation on behalf of the acquiring authority:—

(a) *First Valuation:—*

Full annual value of premises £1,760

from which must be deducted landlord's proportion of rates payable under a special Act, leaves £1,639

Deducting for repairs insurance £182 and 2½ per cent. for probable vacancies, leaves net annual value £1,421

£1,421 capitalised on 5½ per cent. basis, equals £25,833

(b) *Second valuation* £25,578

This witness was of opinion that it was impossible to obtain money on mortgage at 4½ per cent., and that no one would buy a property of this kind on a 5½ per cent. basis.

The arbitrator awarded £32,800, the acquiring authority to pay the taxed costs of the claimant and the fees on the award.

(2) *Prince's Buildings.*

In this case the acquiring authority only desired to acquire a part of the building, and it was arranged that arbitrator should divide his award in respect of this holding into two parts, the first as to the value of a portion covering 208 square yards, together with consequential damage to the remainder, or alternatively, the value of the whole of Prince's Buildings, occupying a site covering an area of 1,806 square yards.

(a) *First valuation for claimant:—*	£	*s.*	*d.*
Present total rentals	2,791	9	0
Fair annual value	4,278	0	0
Deducting one-sixth for repairs, management and insurance, and allowing			

£522 for unexpired portion of certain leases.		£
Valuation		79,689
From this figure 2½ per cent. for probable vacancies must be deducted.		
If the 208 square yards were taken the valuation was:—		
Present rentals	£406	
Estimated rental value	£704	
Capital value being..		13,207
Depreciation of remainder of the property.....		14,015
Total		£27,222

(b) *Second valuation of claimant*:—

The whole—1,806 square yards at £45 per square yard		81,270
If part only taken—213 yards at £60 per square yard, and depreciation of remainder amounted to	£ s. d. 26,724 10 0	

Valuation of acquiring authority:—

(a) *First valuation*—

Estimate of present rental value of the smaller portion	£556	
For smaller portions—		
After certain deductions as in case of Queen's Buildings		£ 8,150
For injurious affection due to interference with lights		500
Total		£8,650

For the whole building—		
Estimated annual value ..	£3,180	£
After deduction and increasing allowance for voids to 5 per cent.		
Net rental.....	£2,590	
Capital value		45,580
(b) *Second valuation—*		
Valuation of rent of whole building	£3,195	
This figure was based on the revaluation of Newcastle-upon-Tyne Union in 1926.		
For the smaller portion—		
Valuation.....		8,064
Depreciation of remainder after interference with lights.....		720
Total.....		£8,784
For the whole		£45,000

The arbitrator awarded :—

1. In the event of a portion of the property having to be taken, the acquiring authority to pay £12,300 in respect of the property taken, and compensation for damage to the remainder of the claimant's property.

2. Alternatively, in the event of the acquiring authority being compelled to purchase and acquire the whole of the land and premises, the award was for £58,580.

The acquiring authority was ordered to pay the taxed costs of the claimant and the fees on the award.

The award of the official arbitrator with reference to Prince's Buildings was the subject of the case of *Greswolde-*

Williams and the Newcastle-on-Tyne Corporation, 26 L. G. R. 26, in which Mr. Justice Clauson held that Prince's Building was a single building, with the result that the Corporation was bound to take the whole provided the plaintiff was willing to convey the whole, as he was of opinion that for the purpose of sect. 92 of the Lands Clauses Act, 1845, the building was one building.

2. *Penge Urban District Council* v. *North Surrey School Council.*

In this arbitration before an official arbitrator 2¼ acres of grass land at Anerley was acquired compulsorily for a public elementary school.

Solicitors and counsel appeared for the parties.

Two valuations were given for the claimants:	£	*s.*	*d.*
(a) *First valuation*	3,840	0	0
Of which £2,250 was in respect of the land acquired and the remainder for severance and injurious affection, the valuation being on the assumption that the acquiring authority's existing school premises would remain as they were. An unclimbable fence was also asked for.			
(b) *Second valuation* was based on the assumption that the whole of the land would be developed for building purposes, the 2¼ acres forming a portion of a total acreage of 55½ acres, of which the existing school occupied 22½ acres.			
Value of land	3,315	0	0
And deducting £652: 10*s.* 0*d.* for roads and sewers—net valuation	2,665	10	0

Valuations for acquiring authority—

(a) *First valuation:*			
2¼ acres, putting the frontage at £8 per foot and the back land at £400 per acre	1,033	0	0

(b) *Second valuation:*

	£	s.	d.
2¼ acres, putting frontage land at £200 and back land at £818	1,018	0	0

The award was—£1,500 as purchase-money and compensation, the acquiring authority to pay the fees on the award and the costs of the claimant as taxed by a Taxing Master of the High Court of Justice; also to erect and maintain a substantial boundary fence.

3. *Martin* v. *Borough of Swindon.*

This was a reference before an official arbitrator between the Borough of Swindon and Mrs. Eliza Martin in respect of premises 157, Rodhouse Road, being a house, shop, yard and garden, and 2 and 4, Morris Street, Swindon, being two private dwelling-houses with yards. The properties being acquired for street widening purposes.

The claim made by the claimant was for £2,200.

The whole property was purchased twenty years previously to 1925 for £580, the assessment being £13 for the shop and £5 for each cottage. The parties were represented by solicitor and the town clerk respectively.

Valuation for the claimant—	£
Value of property	808
Goodwill of the business (five years' purchase at £200 a year profit)	1,000
Loss on forced sale of stock and fixtures ..	33
Total.....	£1,841

Valuation of acquiring authority—	
Value of property—Shop, £322 ..... Cottages, £66 the pair	£388

Witness gave no value to the goodwill.

The Superintendent Valuer, Inland Revenue of Exeter, submitted an assessment of the land under sect. 8 (4) of the Acquisition of Land Act, 1919, as follows £475

[Sect. 8 (4) is as follows:—

"Either party to a claim for compensation may require the Commissioners of Inland Revenue to assess the

value of the land in respect of which the claim arises, and a copy of any such assessment shall be sent forthwith by the Commissioners to the other party, and a certified copy of such assessment shall be admissible in evidence of that value in proceedings before the official arbitrator, and the officer who made the assessment shall attend, if the official arbitrator so required, to answer such questions as the official arbitrator may think fit to put to him thereon."]

The official arbitrator awarded £958 as purchase-money and compensation; the acquiring authority to pay the fees on the award and £21 towards the costs of the claimant.

APPENDIX I.

FORMS AND PRECEDENTS.

1. Notice to Treat.
2. Form of Claim by Owner.
3. Counter-notice by Owner under sect. 92 of the Lands Clauses Act, 1845.
4. Notice of Withdrawal of Notice to Treat after receiving Counter-notice under sect. 92 of the Lands Clauses Act, 1845.
5. Notice of Claimant's desire to have Compensation settled by Arbitration under sect. 23 of the Lands Clauses Act, 1845.
6. Notice of Claim and Demand for Arbitration under sect. 68 of the Lands Clauses Act, 1845.
7. Appointment of Arbitrator by Owner.
8. Notice to produce Lease under sect. 122 of the Lands Clauses Act, 1845.
9. Notice to a Yearly Tenant.

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1. NOTICE TO TREAT.

GIVEN BY A GOVERNMENT DEPARTMENT OR LOCAL OR PUBLIC AUTHORITY.

To X. Y.

WHEREAS the Act, 19 , and the Acts incorporated therewith, give to the the right to acquire land compulsorily. Now the hereby give you notice that in pursuance of the said Act and of the provisions of

the Lands Clauses Act, 1845, and the Acquisition of Land (Assessment of Compensation) Act, 1919, they require to purchase or take the lands and hereditaments, particulars of which will be found in the Schedule hereto and coloured red on the plan hereto annexed. The said demand from you full particulars of your estate and interest in such land and full details of any claim in respect of purchase-money and compensation you make in respect thereof.

And the said are willing to treat with you for the purchase of the said lands and hereditaments as to the compensation to be made to you for any damage that may be sustained by you by reason of the execution of the said works.

Dated .

Clerk to the Council.

To and all other parties claiming to have any interest in the said lands and hereditaments.

SCHEDULE ABOVE REFERRED TO.

Description of property—Map with property coloured red.

[Although it is unnecessary, the provisions of sect. 21 of the Lands Clauses Act, 1845, relating to result of the failure of the owner to deliver a claim, might be endorsed on the notice.]

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2. FORM OF CLAIM BY OWNER.

To .

WHEREAS you, the , did serve on me, on , a notice to treat, dated the , demanding of me particulars of my estate and interest in the land coloured red upon the plan annexed to the said notice to treat, and further demanding particulars of my claim in respect of the purchase-money and compensation by reason of the said land being acquired by you compulsorily.

Now I herewith send particulars of my estate and interest in the said land, and I claim the sum of £ as purchase-money and compensation.

Particulars of Property.

Name and Address and Description.	No. on Plan.	Situation of Premises and Description.	Nature of Estate.	Particulars of Tenancy or Lease.

[If the claim is under the Lands Clauses Act a lump sum will be sufficient.

If the land is being acquired by a public department or local or public authority, full particulars must be given of the claim in respect of the claimant's interest in the land and also the goodwill (if any). See sect. 5 (2) of the Acquisition of Land Act, 1919.]

Dated .

X. Y.

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3. COUNTER-NOTICE BY OWNER UNDER SECT. 92 OF THE LANDS CLAUSES ACT, 1845, WHERE A NOTICE TO TREAT HAS BEEN SERVED IN RESPECT OF PART OF PREMISES ONLY.

To the .

WHEREAS you, , served a notice to treat upon me, on the day of , requiring to purchase compulsorily the lands and hereditaments described in the Schedule thereto, and coloured red on the plan thereto annexed. AND WHEREAS the said lands and hereditaments are part of a (house, building, *or a* manufactory, *as the case may be*). NOW I HEREBY GIVE YOU NOTICE in pursuance of sect. 92 of the Lands Clauses Act, 1845, that I am willing and able to sell and convey the whole of the said (house, building *or* manufactory) and require you, the said , to purchase and take the whole of the said (house, building *or* manufactory).

Dated . (Signed) X. Y.

4. NOTICE OF WITHDRAWAL OF NOTICE TO TREAT AFTER RECEIVING COUNTER-NOTICE UNDER SECT. 92 OF THE LANDS CLAUSES ACT, 1845.

To X. Y.

The , having received a notice from you requiring the said to purchase your interest in the whole of certain premises being a (house, building *or* manufactory, *as the case may be*), the said having on day of served a notice to treat upon you, in respect of a part only of the said (house, building *or* manufactory), the said give you notice that they now withdraw the said notice to treat served upon you.

Dated .

(Signed) .

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5. NOTICE OF CLAIMANT'S DESIRE TO HAVE COMPENSATION SETTLED BY ARBITRATION UNDER SECT. 23 OF THE LANDS CLAUSES ACT, 1845. Sect. 23, Lands Clauses Act, 1845.

To the .

Whereas I, X. Y., received from you a notice to treat, dated the of , demanding from me particulars of my estate and interest in the land and hereditaments set forth in the Schedule thereto and coloured red on the plan annexed thereto, and also of the claim made by me in respect thereof, my claim in respect of the said land and hereditaments accompanies herewith and amounts to over the sum of £50.

And I give you notice that I desire to have the amount of such purchase-money or compensation settled (in default of agreement) by arbitration in the manner prescribed by the Lands Clauses Act, 1845, and other Acts incorporated therewith.

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6. NOTICE OF CLAIM AND DEMAND FOR ARBITRATION UNDER SECT. 68 OF THE LANDS CLAUSES ACT, 1845.

To the Co.

WHEREAS I, M. N., am the [freeholder] or [leaseholder under a lease dated having years unexpired] of certain lands and hereditaments situate at , and which said lands and hereditaments have been injuriously affected by the execution of the works authorised and carried out by you in pursuance of the provisions of the Act, the said premises having been broken and their support shaken, moved and damaged (*as the case may be*).

Now I, the said M. N., claim as compensation for such injurious affection the sum of £ . [AND I HEREBY GIVE YOU NOTICE that unless you are willing to pay to me the said sum of £ and enter into a written agreement for that purpose within twenty-one days after the receipt of this notice, I desire to have the amount of compensation payable to me settled by arbitration under the powers of the Lands Clauses Acts and other Acts incorporated therewith.]

Dated .

(Signed) .

N.B.—If arbitration is not required, but the claimant is satisfied to leave the decision to a sheriff's jury, the paragraph in brackets should be omitted.

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7. APPOINTMENT OF ARBITRATOR BY OWNER.

To .

WHEREAS, in pursuance of the powers contained in the Act and of the Acts incorporated therewith, the Company gave notice to me of their intention to purchase and take compulsorily certain lands and hereditaments described in the Schedule to the said notice.

AND WHEREAS by notice in writing on the day of , I, the said , expressed my desire that the amount of the said compensation should be settled by arbitration.

Now I HEREBY GIVE YOU NOTICE that I appoint to be arbitrator on my behalf to determine the amount of purchase-money and compensation to be paid by the company to me for my estate and interest therein which I am enabled to sell and convey under the said Act, and also the amount of damage I have sustained by reason of the injurious affection of the remainder of my land and hereditaments severed from the lands so purchased owing to the execution of the works authorised by the Act.

Dated .

(Signed) .

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8. NOTICE TO PRODUCE LEASE UNDER SECT. 122 OF THE LANDS CLAUSES ACT, 1845.

To X. Y.

WHEREAS the , in pursuance of the power of compulsory purchase contained in the Act and other Acts incorporated therewith, served a notice to treat, dated , upon you in respect of the land coloured red in the Schedule to the said notice, AND WHEREAS you, on the day of , claimed compensation as a party having a greater interest than as a tenant at will, in respect of the unexpired term or interest under a lease of such lands. Now TAKE NOTICE that you are required by the said to produce, within twenty-one days hereafter, the lease in respect of which such claim is made or the best evidence thereof in your power. AND FURTHER TAKE NOTICE that if within the said twenty-one days you do not comply with such requirements of the said , you will be considered as a tenant holding as from year to year and to be entitled to compensation on such basis as provided by sect. 122 of the Lands Clauses Act, 1845, and other Acts incorporated therewith.

NOTICE IS FURTHER GIVEN that if for twenty-one days after the service of this notice you fail to state the particulars of your claim or to treat with the in respect thereof, or if you and the do not agree as to the amount of compensation to be paid by the for the interest in

such lands belonging to you or which you are by the Lands Clauses Acts or the Act enabled to sell, or for any damage sustained by you by reason of the execution of the works, the amount of compensation will be settled in the manner provided by sect. 121 of the Lands Clauses Act, 1845.

Dated .

(Signed) .

SCHEDULE.

Parties and Company or Place.	Number on Plan and Book of Reference deposited with the Clerk of the Peace for the County of .	Description of Lands and Hereditaments.

9. NOTICE TO A YEARLY TENANT.

To X. Y., of .

TAKE NOTICE that the , acting in pursuance of the powers contained in the Act, 19 , and the powers of the Lands Clauses Act, 1845, and Acts incorporated therewith, HEREBY GIVE YOU NOTICE that they require you to give up possession on the day of to the , or their agents, of the land occupied by you, a description of which is given in the Schedule hereto and coloured red on the accompanying plan. AND FURTHER TAKE NOTICE that the are willing to pay you compensation of the value of your unexpired term or interest in such lands, and for any just allowance which ought to be made to you by an incoming tenant, and any loss or injury you may sustain. In default of agreement between you and the as to the amount of compensation, the said compensation will be settled under the provisions of sect. 121 of the Lands Clauses Act, 1845, by two justices.

Dated day of .

(Signed) .

SCHEDULE.

The above precedents relate to the matters which usually arise in compulsory purchase cases, but for a complete set of forms the practitioner is referred to those to be found in The Encyclopædia of Forms and Precedents, Volume 9, under the heading *Lands and Railways Clauses Acts*.

APPENDIX II.

ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919.

(9 & 10 Geo. 5, c. 57.)

An Act to amend the law as to the Assessment of Compensation in respect of Land acquired compulsorily for public purposes and the costs in proceedings thereon.

[19th August, 1919.]

Be it enacted, &c.

Tribunal for assessing compensation in respect of land compulsorily acquired for public purposes.

1.—(1) Where by or under any statute (whether passed before or after the passing of this Act) land is authorised to be acquired compulsorily by any Government Department or any local or public authority, any question of disputed compensation, and, where any part of the land to be acquired is subject to a lease which comprises land not required, any question as to the apportionment of the rent payable under the lease, shall be referred to and determined by the arbitration of such one of a panel of official arbitrators to be appointed under this section as may be selected in accordance with the rules made by the Reference Committee under this section.

(2) Such number of persons, being persons with special knowledge in the valuation of land, as may be appointed for England and Wales, Scotland and Ireland by the Reference Committee, shall form a panel of persons to act as official arbitrators for the purpose of this Act in England and Wales, Scotland and Ireland respectively: Provided that of the members of the said panel for England and Wales one at least shall be a person having special knowledge of the valuation of land in Wales and acquainted with the Welsh language.

(3) A person appointed to be a member of the panel of official arbitrators shall hold office for such term certain as may be determined by the Treasury before his appointment, and whilst holding office shall not himself engage, or be a partner of any other person who engages, in private practice or business.

(4) There shall be paid out of moneys provided by Parliament to official arbitrators such salaries or remuneration as the Treasury may determine.

(5) The Reference Committee—

(a) for England and Wales, shall consist of the Lord Chief Justice of England, the Master of the Rolls and the President of the Surveyors' Institution;

(b) for Scotland, shall consist of the Lord President of the Court of Session, the Lord Justice Clerk and the Chairman of the Scottish Committee of the Surveyors' Institution;

(c) for Ireland, shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland and the President of the Surveyors' Institution, or (if the President of the Surveyors' Institution thinks fit) a person being a member of the council of that institution and having special knowledge of valuation of land in Ireland appointed by him to act in his place.

Rules for the assessment of compensation.

2. In assessing compensation, an official arbitrator shall act in accordance with the following rules:—

(1) No allowance shall be made on account of the acquisition being compulsory:

(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:

(3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied

only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any bonâ fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration:

(4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account:

(5) Where the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is bonâ fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:

(6) The provisions of Rule (2) shall not effect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

For the purposes of this section an official arbitrator shall be entitled to be furnished with such returns and assessments as he may require.

Provision as to procedure before official arbitrators.

3.—(1) In any proceedings before an official arbitrator, not more than one expert witness on either side shall be heard unless the official arbitrator otherwise directs:

Provided that, where the claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals or, as the case may be, on the damage suffered by reason of the disturbance may be allowed.

(2) It shall not be necessary for an official arbitrator to

make any declaration before entering into the consideration of any matter referred to him.

(3) The official arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.

(4) The official arbitrator shall be entitled to enter on and inspect any land which is the subject of proceedings before him.

(5) Proceedings under this Act shall be heard by an official arbitrator sitting in public.

(6) The fees to be charged in respect of proceedings before official arbitrators shall be such as the Treasury may prescribe.

(7) Subject as aforesaid, the Reference Committee may make rules regulating the procedure before official arbitrators.

Consolidation of proceedings on claims for compensation in respect of various interests in the same land.

4. Where notices to treat have been served for the acquisition of the several interests in the land to be acquired, the claims of the persons entitled to such interests shall, so far as practicable, and so far as not agreed and if the acquiring authority so desire, be heard and determined by the same official arbitrator, and the Reference Committee may make rules providing that such claims shall be heard together, but the value of the several interests in the land having a market value shall be separately assessed.

Provisions as to costs.

5.—(1) Where the acquiring authority has made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by an official arbitrator to that claimant does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made.

(2) If the official arbitrator is satisfied that a claimant has failed to deliver to the acquiring authority a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the acquiring authority to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been

made by the acquiring authority at the time when in the opinion of the official arbitrator sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer.

The notice of claim shall state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated, and when such a notice of claim has been delivered the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land authorised to be acquired, but shall be liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn, and the amount of such compensation shall, in default of agreement, be determined by an official arbitrator.

(3) Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has complied with the provisions of the last preceding subsection, and the sum awarded is equal to or exceeds that sum, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the acquiring authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(4) Subject as aforesaid, the costs of an arbitration under this Act shall be in the discretion of the official arbitrator who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and the official arbitrator may in any case disallow the cost of counsel.

(5) An official arbitrator may himself tax the amount of costs ordered to be paid, or may direct in what manner they are to be taxed.

(6) Where an official arbitrator orders the claimant to pay the costs, or any part of the costs, of the acquiring authority, the acquiring authority may deduct the amount so payable by the claimant from the amount of the compensation payable to him.

(7) Without prejudice to any other method of recovery,

the amount of costs ordered to be paid by a claimant, or such part thereof as is not covered by such deductions as aforesaid shall be recoverable from him by the acquiring authority summarily as a civil debt.

(8) For the purpose of this section, costs include any fees, charges, and expenses of the arbitration or award.

Finality of award and statement of special cases.

6.—(1) The decision of an official arbitrator upon any question of fact, shall be final and binding on the parties, and the persons claiming under them respectively, but the official arbitrator may, and shall, if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court.

(2) The decision of the High Court upon any case so stated shall be final and conclusive, and shall not be subject to appeal to any other Court.

Effect of Act on existing enactments.

7.—(1) The provisions of the Act or order by which the land is authorised to be acquired, or of any Act incorporated therewith, shall, in relation to the matters dealt with in this Act, have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have or shall not have effect:

Provided that nothing in this Act relating to the rules for assessing compensation shall affect any special provisions as to the assessment of the value of land required [*for the purposes of Part I. or Part II. of the Housing of the Working Classes Act*, 1890, *or*] (*a*) under the Defence of the Realm (Acquisition of Land) Act, 1916, and contained in those Acts respectively, or any Act amending those Acts, if and so far as the provisions in those Acts are inconsistent with the rules under this Act [*and the provisions of the Second Schedule to the Housing of the Working Classes Act*, 1890, *as amended by any subsequent enactment (except paragraphs* (4), (5), (29), *and* (31) *thereof) shall apply to an official arbitrator as they apply to an arbitrator appointed under that schedule, and an official arbitrator may exercise*

53 & 54 Vict. c. 70.
6 & 7 Geo. 5, c. 63.

(*a*) The words of the section in brackets have been repealed by the Housing Act, 1925.

all the powers conferred by those provisions on such arbitrator] (*b*).

(2) The provisions of this Act shall apply to the determination of the amount of rent or compensation payable in respect of land authorised to be hired compulsorily under the Small Holdings and Allotments Act, 1908, or any Act amending that Act, and any matter required thereby to be determined by a valuer appointed by the Board of Agriculture and Fisheries shall be determined by an official arbitrator in accordance with this Act (*c*).

8 Edw. 7. c. 36.

Power to refer to Commissioners of Inland Revenue or to agreed arbitrator.

8.—(1) Nothing in this Act shall prevent, if the parties so agree, the reference of any question as to disputed compensation or apportionment of rent to the Commissioners of Inland Revenue or to an arbitrator agreed on between the parties.

(2) Where a question is so referred to the Commissioners of Inland Revenue, the Commissioners shall not proceed by arbitration, but shall cause an assessment to be made in accordance with the rules for the assessment of compensation under this Act, and the following provisions shall have effect:—

(a) The parties shall comply with any direction or requirements as to the furnishing of information (whether orally or in writing), and the production of documents and otherwise;

(b) Any officer of the Commissioners appointed for the purpose shall be entitled to enter on and inspect any land which is subject to the reference to them;

(c) The Commissioners, if either party so desires within such time as the Commissioners may allow, shall give the parties an opportunity of being heard before such officer of the valuation office of the Commissioners as the Commissioners may appoint for the purpose;

(d) The assessment when made shall be published to the parties and take effect as if it were an award of an official arbitrator under this Act;

(*b*) The words in the section in brackets have been repealed by the Housing Act, 1925.

(*c*) This sub-section has been explained by sect. 17 (3) of the Small Holdings and Allotments Act, 1926; see p. 189.

(e) If either party refuses or neglects to comply with any direction or requirement of the Commissioners, the Commissioners may decline to proceed with the matter, and in that case the question shall be referred to an official arbitrator as if there had been no reference to the Commissioners, and the official arbitrator when awarding costs shall take into consideration any report of the Commissioners as to the refusal or neglect which rendered such a reference to him necessary.

(3) Where a question is referred to an arbitrator under subsection (1) of this section, the provisions of this Act, except sections one and four and so much of section three as requires proceedings to be in public and as provides for the fixing of fees, shall apply as if the arbitrator was an official arbitrator.

(4) Either party to a claim for compensation may require the Commissioners for Inland Revenue to assess the value of the land in respect of which the claim arises, and a copy of any such assessment shall be sent forthwith by the Commissioners to the other party, and a certified copy of such assessment shall be admissible in evidence of that value in proceedings before the official arbitrator, and the officer who made the assessment shall attend, if the official arbitrator so require, to answer such questions as the official arbitrator may think fit to put to him thereon.

Certificates of value of official arbitrators.

9. An official arbitrator may on the application of any person certify the value of land being sold by him to a Government department or public or local authority, and the sale of the land to the department or authority at the price so certified shall be deemed to be a sale at the best price that can reasonably be obtained.

Saving for statutory purchases of statutory undertakings.

10.—(1) The provisions of this Act shall not apply to any purchase of the whole or any part of any statutory undertaking under any statutory provisions in that behalf prescribing the terms on which the purchase is to be effected.

(2) For the purposes of this section, the expression "statutory undertaking" means an undertaking established by

Act of Parliament or order having the force of an Act, and the expression "statutory provisions" includes the provisions of an order having the force of an Act.

Application to Scotland and Ireland.

11.—(1) This Act shall apply to Scotland subject to the following modifications:—

(a) The provisions of this Act other than the provisions of the section thereof relating to rules for the assessment of compensation shall apply to the determination of any question which, under subsection (11) of section seven or section seventeen of the Small Landholders (Scotland) Act, 1911, is referred to arbitration, as if the Board of Agriculture for Scotland were the acquiring authority, and as if in the said subsection (11) there were substituted for the Lord Ordinary on the Bills and the Lord Ordinary, except where the Lord Ordinary is therein last referred to, such person as may be prescribed by rules made by the Reference Committee for Scotland; and the provisions of that Act, including the Second Schedule to the Agricultural Holdings (Scotland) Act, 1908, as thereby applied, shall in relation to such determination have effect subject to the aforesaid provisions of this Act:

1 & 2 Geo. 5, c. 49.

8 Edw. 7, c. 64.

(b) "High Court" means either division of the Court of Session; "arbitrator" means arbiter, and "easement" means servitude.

(2) This Act shall apply to Ireland subject to the following modification:—

Nothing in this Act shall affect the determination of the price or compensation to be paid on the compulsory acquisition of land by the Irish Land Commission or Congested Districts Board for Ireland under any statute or the special provisions contained in the Labourers (Ireland) Act, 1885, and the enactments amending the same, with respect to the jurisdiction of the Irish Land Commission in cases where land is taken compulsorily under those provisions for a term of years.

48 & 49 Vict. c. 77.

Short title, commencement and

12.—(1) This Act may be cited as the Acquisition of Land (Assessment of Compensation) Act, 1919, [*and shall come into operation on the first day of September nineteen*

hundred and nineteen, but shall not apply to the determination of any question where before that date the appointment of an arbitration, valuation, or other tribunal to determine the question has been completed, or a jury has been empanelled for the purpose] (*d*). interpretation.

(2) For the purposes of this Act, the expression "land" includes water and any interests in land or water and any easement or right in, to, or over land or water, and "public authority" means any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking.

THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) RULES, 1919.

DATED DECEMBER 2, 1919, MADE BY THE REFERENCE COMMITTEE FOR ENGLAND AND WALES UNDER THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919 (9 & 10 GEO. 5, c. 57).

In pursuance of the Acquisition of Land (Assessment of Compensation) Act, 1919, the Reference Committee for England and Wales constituted under that Act hereby make the following Rules:—

1. These Rules may be cited as the Acquisition of Land (Assessment of Compensation) Rules, 1919. Short title.

2.—(1) In these Rules, unless the context otherwise requires: Interpretation.

The expression "the Act" means the Acquisition of Land (Assessment of Compensation) Act, 1919:

The expression "arbitrator" means an official arbitrator:

The expression "question" means any question of disputed compensation, or any question of the appointment of a rent, which is to be referred to and determined by arbitration in manner provided by the Act.

(2) The Interpretation Act, 1889, applies for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(*d*) The words in brackets have been repealed by the Statute Law Revision Act, 1927.

Application for selection of official arbitrator.

3.—(1) Where any question has arisen either the acquiring authority or the claimant may at any time after the expiration of fourteen days from the date on which the notice to treat was served send to the Reference Committee an application for the selection of an arbitrator.

(2) The acquiring authority or the claimant, as the case may be, shall, immediately after sending the application to the Reference Committee, send notice of the fact to the claimant or the acquiring authority, as the case may be, together with a copy of the application.

(3) An application for the selection of an arbitrator shall be in the form set out in the schedule to the Rules or in a form to the like effect.

Selection of official arbitrator.

4.—(1) The Reference Committee, on receiving a valid application for the selection of an arbitrator, shall, as soon as may be, proceed to select from the panel an arbitrator to deal with the case.

(2) The Reference Committee shall, as soon as they have selected the arbitrator, inform the acquiring authority and the claimant of the name and address of the person so selected.

Consideration of questions by official arbitrator.

5.—(1) The arbitrator selected shall, as soon as may be, proceed with the determination of the question in dispute, and shall arrange with the acquiring authority and the claimant the time and place of the hearing.

(2) The Reference Committee shall send to the arbitrator selected a copy of the application for the appointment of an arbitrator, and the acquiring authority and the claimant shall furnish to the arbitrator on his request any document or other information which it is in their or his power to furnish and which the arbitrator may require for the purpose of considering and determining the case.

(3) Subject to the provisions of the Act and of these Rules the proceedings before an arbitrator shall be such as the arbitrator, subject to any special directions of the Reference Committee, may in his discretion think fit.

Power to select another

6. The Reference Committee may, in the case of the death or the incapacity of the arbitrator originally selected, or if it is shown to the Committee that it is expedient so to do, in

any other case, at any time before the arbitrator has made his award, revoke the reference of the question to the selected arbitrator and select another arbitrator for the purpose of determining the question. official arbitrator.

7.—(1) Where notices to treat have been served for the acquisition of the several interests in the land to be acquired and questions as to the amount of compensation have arisen in the case of any two or more of those interests the acquiring authority may, subject as hereinafter provided, either on making the application for the selection of an arbitrator to hear the claims or at any time thereafter make an application to the Reference Committee to have the same person selected as the arbitrator to hear and determine all the claims to which the application relates: Consolidation of claims relating to several interests in the same land.

Provided that no such application shall be made as respects a claim if an arbitrator has already entered on the consideration of the claim.

(2) On receiving an application under this Rule the Reference Committee shall select the same person to act as arbitrator in respect of all the claims to which the application relates, and so far as necessary for that purpose may revoke any selection previously made.

(3) An application under this Rule shall be in the form set out in the schedule to these Rules or in a form to the like effect.

(4) Where the same person has been selected under this Rule to act as arbitrator in respect of two or more claims the acquiring authority may at any time after he has been so selected apply to him for an order that all the claims shall be heard together.

(5) Notice of intention to apply to the arbitrator for such an order as aforesaid shall be sent to each claimant and the notice shall specify the date on which and the place at which the arbitrator will hear any objection which may be made to the application.

(6) If any claimant objects to have his claim heard together with the other claims he shall within seven days after the receipt of the notice aforesaid send notice of his objection to the acquiring authority and the arbitrator.

(7) Where the acquiring authority apply for an order under this Rule the arbitrator after taking into consideration any objections made to the application shall make such order in the matter as he thinks proper having regard to all the circumstances of the case.

(8) On an application for an order under this Rule an order for consolidation may be made if the arbitrator thinks fit with respect to some only of the claims, and the order may in any case be made subject to such special directions as to costs, witnesses, method of procedure, and otherwise as the arbitrator thinks proper.

Provision as to payment of fees prescribed by Treasury.

8.—(1) If the fees prescribed by the Treasury in pursuance of the powers conferred on them by subsection (6) of section three of the Act include a fee in respect of an application under these Rules or a fee in respect of the hearing before an official arbitrator, the prescribed fee shall be collected by means of adhesive stamps affixed to or stamps impressed on the application and the award of the arbitrator respectively.

(2) Any application under these Rules which is not properly stamped in accordance with the foregoing provision shall be treated as invalid, and the award of an official arbitrator shall not be delivered out by him unless and until it has been properly stamped in accordance with the said provision.

Provision as to sending notice.

9. Any notice or other document required or authorised to be sent to any person for the purpose of these Rules shall be deemed to be duly sent by post addressed to that person at his ordinary address, and the address of the Reference Committee shall for this purpose be—J. Johnston, Esq., Secretary to the Reference Committee, Room 174, Royal Courts of Justice, Strand, London, W.C.2.

Informalities not necessarily to invalidate proceedings.

10. Save as herein otherwise expressly provided, any failure on the part of any authority or any person to comply with the provisions of these Rules shall not render the proceedings, or anything done in pursuance thereof, invalid, unless the arbitrator so directs.

SCHEDULE.

A.

FORM OF APPLICATION FOR SELECTION OF OFFICIAL ARBITRATOR.

Acquisition of Land (Assessment of Compensation) Act, 1919.

Application for Selection of Official Arbitrator.
To the Reference Committee.

I, being the claimant [*or*, We being the acquiring authority] specified in the annexed particulars, hereby apply for the selection, pursuant to the above Act, of an official arbitrator to hear and determine the question of which particulars are annexed.

*Signed .

Date .

* If the application is signed by an agent, add "by his [*or* their] agent."

Particulars.

Name and address of acquiring authority:

Name and address of acquiring authority's solicitor or agent:

Name and address of claimant:

Name and address of claimant's solicitor or agent:

Description of land to be acquired:

Situation of land to be acquired:

County .

Parish .

Nature of question (whether as to amount of compensation or apportionment of rent):

Interest in respect of which compensation is claimed:

B.

FORM OF APPLICATION TO HAVE SAME PERSON APPOINTED AS ARBITRATOR ON CLAIMS IN RESPECT OF VARIOUS INTERESTS IN SAME LAND.

Acquisition of Land (Assessment of Compensation) Act, 1919.

Application to have same person appointed as Arbitrator on Claims in respect of various interests in same land.

To the Reference Committee.

We, being the acquiring authority in the case of the land specified in the annexed particulars, apply, pursuant to the Rules made under the above Act, to have the same person selected as the official arbitrator to hear and determine all the claims for compensation made in respect of the several interests in the said land.

No official arbitrator has been selected in the case of any of the said claims [*or* An official arbitrator has already been selected in the case of the claims of the persons numbered in the annex of particulars, namely Mr. in the case of No. 1 *state the facts*].

*Signed .

Date .

* If the application is signed by an agent of the applicants, add "by their agent."

Particulars.

Name and address of acquiring authority:

Name and address of acquiring authority's solicitor or agent:

Description of land to be acquired:

Situation of land to be acquired:

County .

Parish .

Names and addresses of (i) the persons entitled to the several interests in the land, and (ii) their respective solicitors or agents:	Nature of interest.
1. (i)	1.
(ii)	
2. (i)	2.
(ii)	
3. (i)	3.
(ii)	

We, the Reference Committee for England and Wales under the Acquisition of Land (Assessment of Compensation) Act, 1919, have made the above rules in pursuance of the powers conferred on us by the said Act.

Reading, C.J.
Sterndale, M.R.
2nd December, 1919. *Andrew Young*, P.S.I.

THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) FEES RULES, 1920.

DATED FEBRUARY 24, 1920, MADE BY THE TREASURY UNDER SECTION 3 (6) OF THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919 (9 & 10 GEO. 5, c. 57).

In pursuance of sub-section (6) of section three of the Acquisition of Land (Assessment of Compensation) Act, 1919, the Lords Commissioners of His Majesty's Treasury hereby make the following rules:—

1.—(1) These rules may be cited as the Acquisition of Land (Assessment of Compensation) Fees Rules, 1920.

(2) In these rules the expression "the Act" means the Acquisition of Land (Assessment of Compensation) Act, 1919.

2. On every application for the selection of an arbitrator made in accordance with the rules made under the Act by the Reference Committee there shall be paid the fee of £1.

3.—(1) On an award by an official arbitrator under the Act there shall be paid a fee calculated by reference to the amount awarded to the claimant in accordance with the following scale:—

Scale of Fees on Awards.

Amount Awarded.	Amount of Fee.
Not exceeding £200	£5 : 5*s.*
Exceeding £200 but not exceeding £500.....	£5 : 5*s.* with an addition of £1 : 1*s.* in respect of every £50 or part of £50 by which the amount awarded exceeds £200.
,, £500 ,, ,, £1,000	£11 : 11*s.* with an addition of £1 : 1*s.* in respect of every £100 or part of £100 by which the amount awarded exceeds £500.
,, £1,000.....	£16 : 16*s.* with an addition of £1 : 1*s.* in respect of every £200 or part of £200 by which the amount awarded exceeds £1,000, but not exceeding in any case £105.

(2) In addition to the fee payable under the scale aforesaid, there shall, where the hearing before the arbitrator in respect of any claim or matter referred to him occupies

more than one day, be paid for each day or part of a day after the first day a further fee on the following scale:—

Amount Awarded.	Amount of Fee.
	£ s. d.
Not exceeding £500	5 5 0
Exceeding £500 and not exceeding £5,000	10 10 0
,, £5,000 ,, ,, £20,000	21 0 0
,, £20,000	42 0 0

For the purpose of the foregoing provision:—

Any time spent by the arbitrator in viewing any land which is the subject matter of the proceedings before him shall be treated as part of the hearing:

A day shall be taken to be a working period of five hours.

Dated February 24th, 1920.

James Parker.
J. Towyn Jones.
Two of the Lords Commissioners of His Majesty's Treasury.

NOTE.—The fees prescribed in the above scales are in addition to the stamp duty charged on awards by the Stamp Act, 1891.

THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) FEES (No. 2) RULES, 1920.

DATED APRIL 5, 1920, MADE BY THE TREASURY UNDER SECTION 3 (6) OF THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919 (9 & 10 GEO. 5, C. 57).

In pursuance of Subsection (6) of Section 3 of the Acquisition of Land (Assessment of Compensation) Act, 1919, the Lords Commissioners of His Majesty's Treasury hereby make the following rules:—

1.—(i) These rules may be cited as the Acquisition of Land (Assessment of Compensation) Fees (No. 2) Rules, 1920.

(ii) In these rules, the expression "original rules" means the Acquisition of Land (Assessment of Compensation) Fees Rules, 1920.

(iii) In these rules, the expression "the Act" means the Acquisition of Land (Assessment of Compensation) Act, 1919.

2. Where the award of an official arbitrator under the Act is an award in terms of rent or other annual payment, the following scales of fees marked A and B shall be substituted for the scales set forth in Rule 3 (1) and Rule 3 (2) respectively of the original rules:—

A.

Amount Awarded.	Amount of Fee.
Not exceeding £10 per annum	£5 : 5*s*.
Exceeding £10 per annum, but not exceeding £25 per annum.	£5 : 5*s*., with an addition of £1 : 1*s*. in respect of every £2 : 10*s*. or part of £2 : 10*s*. by which the rent, &c. awarded exceeds £10 per annum.
Exceeding £25 per annum, but not exceeding £50 per annum.	£11 : 11*s*., with an addition of £1 : 1*s*. in respect of every £5 or part of £5 by which the rent, &c. awarded exceeds £25 per annum.
Exceeding £50 per annum	£16 : 16*s*., with an addition of £1 : 1*s*. in respect of every £10 or part of £10 by which the rent, &c. awarded exceeds £50, but not exceeding in any case £105.

B.

Amount Awarded.	Amount of Fee.
	£ s. d.
Not exceeding £25 per annum	5 5 0
Exceeding £25 per annum and not exceeding £250 per annum.	10 10 0
Exceeding £250 per annum and not exceeding £1,000 per annum.	21 0 0
Exceeding £1,000 per annum	42 0 0

Dated fifth April, 1920.

James Parker.

J. Towyn Jones.

Two of the Lords Commissioners of His Majesty's Treasury.

THE GOVERNMENT OF IRELAND (ADAPTATION OF ENACTMENTS) (No. 3) ORDER, 1922.

37.—(1) For the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, there shall be a separate Reference Committee for Northern Ireland and a separate panel of official arbitrators for Northern Ireland, and that Act shall have effect accordingly.

(2) The Reference Committee for Northern Ireland shall consist of the Lord Chief Justice of Northern Ireland and the President of the Surveyors' Institution or (if the President of the Surveyors' Institution thinks fit) a person, being a member of the Council of that Institution and having special knowledge of valuation of land in Northern Ireland, appointed by him to act in his place.

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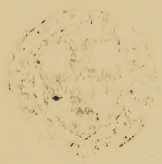

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